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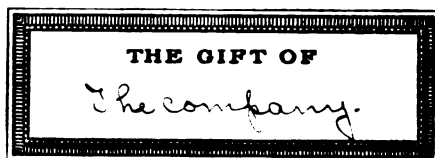
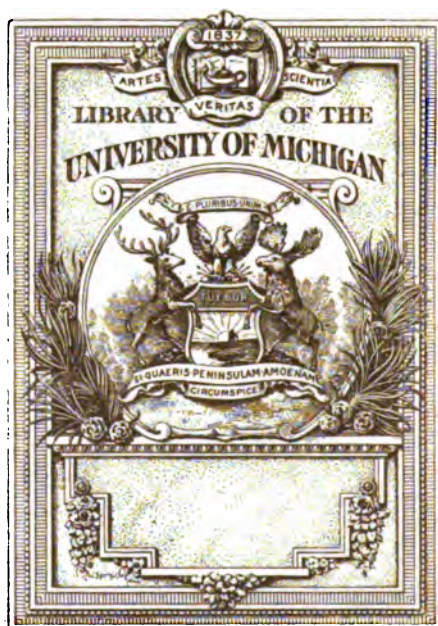
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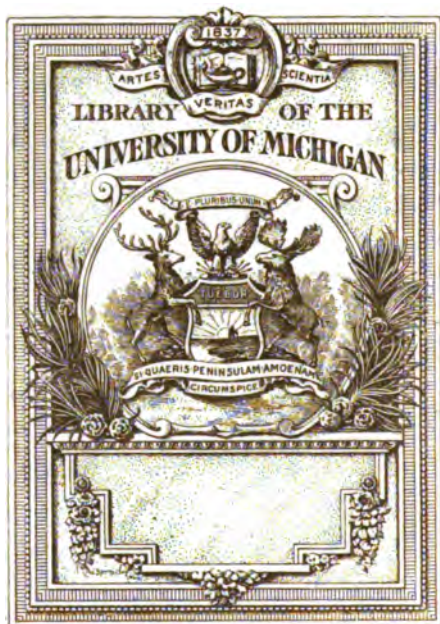
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COMMISSION LEAFLETS

(NOS. 31-34 INCLUSIVE)

CONTAINING

SELECTED COMMISSION DECISIONS

JULY 1914—OCTOBER 1914

COMPILED BY THE
AMERICAN TELEPHONE AND TELEGRAPH COMPANY
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American Telephone and Telegraph Company

Legal Department

15 Dey Street, New York City

COMMISSION LEAFLET No. 31

Recent Commission Orders, Rulings and Decisions
from the following States:

Arizona

California

Illinois

Kansas

Louisiana

Massachusetts

Nebraska

Nevada

New Jersey

New York

Ohio

Oregon

Pennsylvania

South Carolina

South Dakota

Wisconsin

and from

District of Columbia

Nova Scotia

JULY 1, 1914.

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PART I.
COMMISSION ORDERS, RULINGS AND DECISIONS
DIRECTLY AFFECTING TELEPHONE AND
TELEGRAPH COMPANIES.

ARIZONA.

Corporation Commission.

ARIZONA CORPORATION COMMISSION *v.* THE MOUNTAIN STATES
TELEPHONE AND TELEGRAPH COMPANY.

Docket No. 154.

Decided May 7, 1914.

**Filing of Revised Schedule of Rates for Exchange Service — Elimination
of Discriminatory Features of Existing Schedule.**

SUPPLEMENTAL ORDER.

WHEREAS, this Commission did, on April 1, 1914, order * the defendant, in the above entitled cause, to install a new and adequate telephone exchange in the town of Nogales, Arizona, and

WHEREAS, it appears from an inspection of the rates, filed with this Commission, that there exists many rates which are discriminatory and illegal, and

WHEREAS, under the laws of this State, and order of this Commission, all rates shall be reasonable and uniform;

It is, therefore, ordered, That defendant company file with Commission a new schedule of rates to be charged telephone subscribers in said exchange, which shall be reasonable and uniform, and remove all discriminatory rates that now exist at said exchange.

The rates so filed, when approved by this Commission, shall be effective when the company shall have complied with the Commission's order, in this case, and shall remain in full force and effect, subject to the future order of this Commission.

Dated at Phoenix, Arizona, this seventh day of May, 1914.

* The Commission's previous order in this case is printed in Commission Leaflet No. 30, at page 1155.—Ed.

CALIFORNIA.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE BAY CITIES HOME TELEPHONE COMPANY, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND THE CITY OF OAKLAND, FOR AN ORDER AUTHORIZING THE TRANSFER AND ASSIGNMENT OF A CERTAIN FRANCHISE AND FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF THE RIGHTS GRANTED BY SAID FRANCHISE.

Application No. 1071 — Decision No. 1436.

Decided April 15, 1914.

Approval of Transfer and Assignment of Franchise — Surrender of Transferee's Franchise to City — Advantages Accruing to City as Result of Transfer — Certificate of Public Convenience and Necessity Granted to Transferee.

Bay Cities Home Telephone Company authorized to transfer and assign to The Pacific Telephone and Telegraph Company all rights and privileges under a certain franchise granted to the former company by the city of Oakland, provided that the city of Oakland shall pass an ordinance approving such franchise. The Pacific Telephone and Telegraph Company granted a certificate of public convenience and necessity to exercise rights under the franchise herein authorized to be transferred.

APPEARANCES:

William Thomas, for Bay Cities Home Telephone Company.

Horace D. Pillsbury, for The Pacific Telephone and Telegraph Company.

Frank K. Mott, mayor of Oakland, and *Charles A. Beardsley*, assistant city attorney of Oakland, for the city of Oakland.

REPORT.

LOVELAND, *Commissioner*:

In this application the Bay Cities Home Telephone Company, a corporation, and The Pacific Telephone and Tele-

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graph Company, a corporation, ask this Commission to approve of the transfer and assignment of a franchise heretofore granted to the Home Telephone Company, by ordinance duly passed on February 2, 1906, and by that company assigned to the Bay Cities Home Telephone Company, to The Pacific Telephone and Telegraph Company, and to give The Pacific Telephone and Telegraph Company a certificate that public convenience and necessity require, and will require, the exercise of the rights granted by said franchise.

The city of Oakland, a municipal corporation, joined in the application and was represented at the hearing by its mayor, Honorable Frank K. Mott, and its assistant city attorney, Mr. Charles A. Beardsley.

The franchise which it is herein sought to transfer from the Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company is a franchise to maintain and operate a telephone system in the city of Oakland granted by Ordinance No. 2430 by the city of Oakland, a copy of which franchise and ordinance were attached to the petition, marked "Exhibit A," and to which reference is made for the conditions of the franchise as set forth in the ordinance.

From the testimony it appears that heretofore, to wit, on the fifteenth day of March, 1912, previous to the effective date of the Public Utilities Act, the Bay Cities Home Telephone Company transferred all of its physical and tangible properties to the Home Long Distance Telephone Company and that upon the same date the Home Long Distance Telephone Company transferred all of said physical properties to The Pacific Telephone and Telegraph Company, and that thereafter the Bay Cities Home Telephone Company no longer exercised the rights granted to it by the city of Oakland under the franchise, as above set forth, and that said Bay Cities Home Telephone Company now desires to transfer and assign said franchise to The Pacific Telephone and Telegraph Company.

This franchise was granted, as above stated, on the sec-

ond day of February, 1906, for the term of fifty years, and has, therefore, forty-two years yet to run.

The Pacific Telephone and Telegraph Company is also operating in the city of Oakland under a franchise granted by said city on May 16, 1892, by Ordinance No. 1423, which ordinance will expire by limitation in 1942, having, therefore, but twenty-eight years yet to run.

It is the desire of The Pacific Telephone and Telegraph Company to surrender to the city of Oakland this franchise and hereafter to maintain and operate its system in said city of Oakland under the franchise now held by the Bay Cities Home Telephone Company, the transfer of which to The Pacific Telephone and Telegraph Company the Commission is herein asked to approve.

It was shown at the hearing that the franchise now held by The Pacific Telephone and Telegraph Company, which it desires to surrender to the city of Oakland, contains no provisions requiring the payment of any percentage of its gross receipts or any other payment to the city of Oakland. Neither does it require The Pacific Telephone and Telegraph Company to furnish the city of Oakland with any free telephones or free telephone service.

It was further shown that there is litigation now pending in the Superior Court of Alameda County, California, between the city of Oakland and the Bay Cities Home Telephone Company, by which litigation the city of Oakland attempts to recover from the Bay Cities Home Telephone Company on the bond given by that company for non-compliance with the conditions of the ordinance and franchise under which said Bay Cities Home Telephone Company operated in said city of Oakland up to the time that it sold its physical properties to The Pacific Telephone and Telegraph Company;

That both the Bay Cities Home Telephone Company and the city of Oakland desire now to settle said litigation so that the sureties on said bond may be discharged from liability and that, in lieu thereof, said city of Oakland may receive the performance of certain obligations from and by The Pacific Telephone and Telegraph Company;

That the terms of said proposed compromise, as set forth in an ordinance proposed to be passed by the council of the city of Oakland, are set forth in an exhibit marked "Exhibit C" and filed with the petition.

In Ordinance No. 2430 ("Exhibit A" in these proceedings), by which the city of Oakland granted a franchise to the Home Telephone Company, appears the following condition:

"*Eleventh* — That the said grantee, his or its successors or assigns, shall not, without the consent of the city of Oakland, evidenced by ordinance duly passed by the council thereof, sell or transfer its property or any of the rights or privileges authorized or granted by said franchise to any person, company, combination trust or corporation now engaged in the telephone business in the city of Oakland, and shall not at any time enter into any agreement, directly or indirectly, with any person, company, trust, combination or corporation now engaged in the telephone business in the city of Oakland concerning the rate to be charged for telephone service." • • •

While thus prohibiting the grantee from selling or transferring its property, rights or privileges without the consent of the city of Oakland, the ordinance contains no proviso as to forfeiture of the franchise in case the grantee should disregard the prohibition as to transfer. But, granting even that the governing body of the city of Oakland had the right to forfeit the franchise which it had granted to the Home Telephone Company because said company had transferred its physical properties to The Pacific Telephone and Telegraph Company, the fact remains that the city council of Oakland did not forfeit said franchise and said city, by its mayor and assistant city attorney, now appears before the Commission approving of and joining in this application that the Bay Cities Home Telephone Company may now transfer said franchise to The Pacific Telephone and Telegraph Company and that The Pacific Telephone and Telegraph Company be permitted to exercise the rights granted by said franchise.

It is apparent that the city of Oakland will profit very materially by the granting of this application: *first*, it will be furnished by The Pacific Telephone and Telegraph Com-

pany, with 220 telephones and the service incidental to such telephones free of charge, whereas it now has no free service; *second*, it will receive 2 per cent. of the gross receipts of The Pacific Telephone and Telegraph Company in the city of Oakland, as provided by the Broughton Act, the estimate of such returns to the city of Oakland, during the period for which the franchise which it is now sought to have transferred has to run, being about one and one quarter million dollars.

A protest against the granting of this application was filed by Mr. E. C. McDonough, formerly an employee of the Bay Cities Home Telephone Company, or its predecessor, in which protest certain statements are made as to certain acts of the Bay Cities Home Telephone Company with which Mr. McDonough thinks the Commission and the people of Oakland should be made aware of before this application is passed upon.

The most important of Mr. McDonough's statements is that, as a director in the Bay Cities Home Telephone Company, he signed the transfer of the Bay Cities Home Telephone Company's properties to the Home Long Distance Telephone Company and from the latter company to The Pacific Telephone and Telegraph Company, thinking it was a contract for construction work; and that the ordinance passed by the city council of Oakland granting the franchise to the Home Telephone Company provided that such franchise was forfeited if the grantee sold or transferred its property.

As to the first statement: Mr. William Thomas, attorney for the Bay Cities Home Telephone Company, stated positively, and offered to prove by two witnesses, that every paper signed by the directors on the day that the transfer was made from the Bay Cities Home Telephone Company to the Home Long Distance Telephone Company and from that company to The Pacific Telephone and Telegraph Company was read aloud at the meeting of the directors and discussed by said directors before being signed. In any event, this was something which took place prior to the

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effective date of the Public Utilities Act, and is, therefore, not before the Commission in this application.

As to the second statement, that the ordinance passed by the city of Oakland granting the franchise to the Home Telephone Company contained a forfeiture clause, attention has already been drawn to the fact that, while said ordinance contained a prohibition as to the transfer of its property by the grantee, it did not provide for a forfeiture.

The principles by which I believe the Commission should be guided in deciding this application are set forth in Application No. 54 (*In the Matter of the Application of The Pacific Telephone and Telegraph Company for Authorization to Purchase the Capital Stock of the Home Telephone and Telegraph Company of Pasadena* *), although in the case at bar there seems even to be more reason for granting the application.

The transfer of the franchise in question from the Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company is made as a gift, without consideration or cost to The Pacific Telephone and Telegraph Company. It is clear that the city of Oakland will be greatly benefited in a financial way, and that the people will probably receive a better and more satisfactory service.

An ordinance which the council of the city of Oakland proposes to pass, approving of the transfer of this franchise, was attached to the application and, as was decided in Application No. 54,* *supra*, I shall recommend that the order under this application shall become effective only upon the passage of said ordinance or similar ordinance of approval by the city council of the city of Oakland.

I find as a fact that public convenience and necessity require, and will require, that the Bay Cities Home Telephone Company be given permission to transfer its franchise heretofore granted to it by the city of Oakland, as above

* The Commission's decision on this application is printed in Commission Leaflet No. 8, at page 7.—Ed.

set forth, to The Pacific Telephone and Telegraph Company and that The Pacific Telephone and Telegraph Company be granted a certificate that public convenience and necessity require and will require the exercise of the rights granted by said franchise to the Bay Cities Home Telephone Company and now transferred to The Pacific Telephone and Telegraph Company.

I recommend the following order:

ORDER.

An application having been presented to this Commission by the Bay Cities Home Telephone Company, a corporation, to assign and transfer a certain franchise, of which it is the owner and holder, heretofore, to wit, on February 2, 1906, granted by the city of Oakland to the Home Telephone Company by Ordinance No. 2430, a copy of which was filed with this application and to which reference is hereby made; and The Pacific Telephone and Telegraph Company having joined in said application for permission to make said transfer and also for permission to exercise the rights and privileges granted by said franchise; and the city of Oakland having also joined in the application for the transfer of said franchise and for the granting to The Pacific Telephone and Telegraph Company of permission to exercise the rights and privileges comprehended in said franchise; and a hearing having been duly held and the matter of the transfer of said franchise thoroughly considered; and the Commission having found as a fact that public convenience and necessity require, and will require, the granting of permission to the Bay Cities Home Telephone Company to transfer said franchise to The Pacific Telephone and Telegraph Company and to The Pacific Telephone and Telegraph Company of permission to accept such transfer and exercise the rights and privileges granted by said franchise, and that the city of Oakland will be greatly benefited financially by this transfer, as set forth in the opinion preceding this order.

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It is hereby ordered, That the Bay Cities Home Telephone Company be, and it is hereby, granted permission to transfer said franchise and The Pacific Telephone and Telegraph Company is hereby granted permission to accept such transfer; that The Pacific Telephone and Telegraph Company is hereby granted permission to exercise the rights and privileges granted by said franchise; that this order shall become effective only upon the passage by the city council of Oakland of an ordinance similar to or identical with the copy of a proposed ordinance filed by the city with this application.

While the physical properties of the Bay Cities Home Telephone Company were transferred to The Pacific Telephone and Telegraph Company prior to the effective date of the Public Utilities Act, the decision in this case will be based in part upon an agreement by The Pacific Telephone and Telegraph Company that the amount paid by that company to the Bay Cities Home Telephone Company, at the time the physical assets of the latter were transferred to the former, shall not be considered binding upon the Commission, or other regulatory body, as the fair value of said physical properties for rate fixing purposes, and The Pacific Telephone and Telegraph Company is hereby required to file a written stipulation to that effect before the order herein shall become effective.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this fifteenth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF RAYMOND TELEPHONE
COMPANY FOR PERMISSION TO CHANGE ITS RULES SO AS
TO COLLECT IN ADVANCE FOR TELEPHONE RENTALS.

Application No. 1078—Decision No. 1450.

Decided April 17, 1914.

Approval of Rule as to Payment of Rentals in Advance.

REPORT.

The Raymond Telephone Company having applied to this Commission for permission to change its published schedule of rates and rules and regulations affecting rates so as to enable it to collect from its patrons in advance for telephone rentals, and it appearing to the Commission that the applicant, Raymond Telephone Company, is amply justified in requiring the payment of its monthly accounts for rentals by its patrons in advance, and that this is not a case in which a public hearing is necessary.

It is hereby ordered, That the Raymond Telephone Company be, and it hereby is, permitted to revise its schedule of rates and rules and regulations affecting rates, so as to enable it to collect from its patrons for monthly rentals in advance; *provided*, that this permission is not to be taken as authority to deny service for non-payment of accounts alleged or claimed to be due, except for current monthly accounts.

This order to be and become effective from the date of its approval.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this seventeenth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA AND OREGON TELEGRAPH COMPANY TO SELL ITS PLANT TO NEVADA, CALIFORNIA AND OREGON TELEGRAPH AND TELEPHONE COMPANY AND OF THE LATTER COMPANY TO ISSUE BONDS OF THE FACE VALUE OF TWENTY-EIGHT THOUSAND TWO HUNDRED NINETY-NINE DOLLARS AND SEVENTY-NINE CENTS.

Application No. 837.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA NORTHERN TELEPHONE AND TELEGRAPH COMPANY TO SELL ITS PLANT TO NEVADA, CALIFORNIA AND OREGON TELEGRAPH AND TELEPHONE COMPANY AND OF THE LATTER COMPANY TO ISSUE BONDS OF THE FACE VALUE OF SIXTY-SEVEN THOUSAND TWO HUNDRED NINETY-NINE DOLLARS AND SIXTY CENTS.

Application No. 876—Decision No. 1456.

Decided April 25, 1914.

Supplemental Order—Approval of Resolutions of Stockholders and Directors.

FIRST SUPPLEMENTAL ORDER.

GORDON, *Commissioner*:

This Commission having issued its order * on February 7, 1914, authorizing Nevada, California and Oregon Telegraph and Telephone Company to issue \$55,000 of its first mortgage 6 per cent. forty-year bonds; and said order having been conditioned upon the approval by this Commission under a supplemental order of such resolutions by stockholders and directors of Nevada, California and Oregon Telegraph and Telephone Company as might be necessary to make the proposed transfer of property and the issue of bonds legal and binding; and Nevada, California and Oregon Telegraph and Telephone Company having filed such resolutions,

* Printed in Commission Leaflet No. 29, at page 719.—ED.

It is hereby ordered, That the same be, and they are hereby, approved in so far as they constitute proper authority for Nevada, California and Oregon Telegraph and Telephone Company to issue bonds and to acquire the property of the California and Oregon Telegraph Company, and also the property of the California Northern Telephone and Telegraph Company.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-fifth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF O. F. GOODRICH,
DOING BUSINESS UNDER THE FICTITIOUS NAME AND STYLE
OF ANTELOPE VALLEY TELEPHONE COMPANY, FOR AN
ORDER AUTHORIZING AN INCREASE IN CHARGES.

Application No. 715 — Decision No. 1464.

Decided April 28, 1914.

Increase in Rates for Telephonic Service — Valuation of Property — Cost of Reproduction — Present Value — Cost of Service — Operating Expenses — Toll Revenue — Allowance for Depreciation — Working Capital — Allowance for Return upon Investment — Adjustment of Rate Schedule — Rates for Business and Residence Service — Disapproval of Rule Requiring Deposit by Prospective Subscribers as a Condition Precedent to Service.

Applicant, contending that the present rates derived from his telephone system, operated in Lancaster and adjacent towns, are insufficient to cover operating expenses and a fair return upon capital invested, petitions the Commission for permission to increase said rates, and also to demand a deposit of \$5.00 from prospective consumers.

Held: That the present rates are unjust, though not to the extent claimed by applicant; just and reasonable rates prescribed, provided such rates shall include sixteen-hour service in lieu of twelve-hour service now in effect. Application for permission to demand a five-dollar deposit from prospective consumers denied, pending the further order of the Commission with regard thereto.

APPEARANCE :

William B. Ogden, for applicant.

REPORT.

GORDON, *Commissioner*:

This is an application for an order of this Commission authorizing an increase in rates for telephone service by the Antelope Valley Telephone Company. This company, of which the applicant, O. F. Goodrich, is the sole owner, operates a telephone exchange in the town of Lancaster with lines serving the adjacent towns of Del Sur, Elizabeth Lake, North and South Portal, Fairmont and Howards Camp in Los Angeles County, California.

Statements of revenue, expenses, and investment purporting to show that this company is being operated at a loss equal to approximately 20.5 per cent. of the amount claimed as the applicant's investment have been filed with the application as exhibits, and on this showing of loss the Commission is asked to authorize a general increase in rates.

The application was heard in Los Angeles on January 8, 1914. The hearing developed the fact that the statements referred to are incomplete and incorrect in various respects and, for this reason, the showing as to loss is not a correct showing. A review of the testimony and of statements subsequently submitted at the direction of the Commission, by eliminating certain objectionable items in the original statements and those subsequently filed, indicates that instead of this company's operations showing a loss, the company may actually be earning a small profit.

However, since the present schedule of rates limits the classes of service now offered, and since there may be some uncertainty as to some of the items of operating expenses which might be properly admitted, and since certain matters affecting the service appear to require modification, a revision of the present rates should be provided for.

I shall now discuss those features of these various statements which appear objectionable. The service now furnished and the rates now charged by the applicant are as follows:

One-party	\$2 50 per month
Ten-party within the town limits of Lancaster.....	1 00 per month
Ten-party beyond two miles from the town of Lancaster.	1 50 per month
Toll stations	5 00 per month
Extensions	1 00 per month

The rates which the applicant proposes to charge his patrons are as follows:

EQUIPMENT AND RATES.

<i>Business.</i>			
<i>Class of service</i>		<i>Wall set</i>	<i>Desk set</i>
One-party		\$3 00	\$3 50
Two-party		3 00	3 50
Four-party		2 50	3 00
Ten-party		2 00	2 50
Extensions		1 00	1 00

<i>Residence.</i>			
One-party		\$3 00	\$3 50
Two-party		2 50	3 00
Four-party		2 00	2 50
Ten-party		1 50	2 00
Extensions		1 00	1 00

The application and exhibits were drawn during the month of October and filed with the Commission on November 1, 1913. "Exhibit A" is a statement showing the classification of subscribers and the rates paid as of the date of the application and the total revenues derived through these rates, as follows:

37 ten-party subscribers at \$1.00 per month.....	\$37 00
5 ten-party subscribers at \$1.50 per month.....	7 50
2 two-party subscribers at \$1.75 per month.....	3 50
5 one-party subscribers at \$2.00 per month.....	10 00
1 one-party subscriber at \$2.50 per month.....	2 50
3 toll stations at \$5.00 per month.....	15 00
3 contracts with city of Los Angeles.....	10 00

56 subscribers \$85 50 revenue

"Exhibit B" is a statement of toll business for a period of one year ending September 20, 1913, and showing the average monthly toll receipts to be \$4.50.

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"Exhibit C" is a statement showing the average monthly expenses of operation as follows:

Office rent, light and fuel.....	\$14 00
Operators' salaries	17 10
Manager's salary	90 00
Postage, printing and stationery.....	3 00
Repairs and up keep.....	25 00
TOTAL	\$149 10

"Exhibit D" is a statement of investment, showing the total valuation of the property to be \$4,901.50.

It will be noted that "Exhibit C" indicates an operating expense of \$59.10 per month in excess of the total revenues in "Exhibits A" and "B," which aggregate \$90.00 per month. The applicant adds to this deficit, interest on the investment at 6 per cent. per annum and alleges that on this basis the monthly loss is \$83.60, which, as above stated, represents an annual loss approximating 20.5 per cent. of the investment.

A comparison of the applicant's present rates, as shown in the application, with the classification shown in "Exhibit A," and the applicant's testimony disclosed certain discrepancies, as a result of which the applicant was directed to submit to the Commission a corrected classification of subscribers and rates which they were then paying. This corrected classification has been submitted and will be alluded to later.

The testimony also shows that the statement of toll revenues indicated in "Exhibit B" represents only a very small portion of the actual total monthly toll revenues.

"Exhibit C" contains a note explaining that the operators receive as part compensation for salaries certain commissions allowed the applicant by The Pacific Telephone and Telegraph Company for the collection of its long distance tolls. These commissions are paid by that company under the terms of a so-called connecting agreement providing for the interchange of service between the two companies. The testimony shows also that the appli-

cant has in effect certain toll charges not heretofore filed with the Commission for switching between points on his lines beyond Lancaster, 15 per cent. of which the operators also retain as part compensation for salaries, and that the toll revenues shown in "Exhibit B" represent only the 85 per cent. of these tolls which go to the applicant and no part whatever of the tolls of The Pacific Telephone and Telegraph Company above referred to. The applicant's statements of receipts, "Exhibits A" and "B," should, of course, include the total amount of revenues accruing from subscribers' monthly rates and the total receipts from commissions paid by The Pacific Telephone and Telegraph Company and from the applicants' own line charges without reference to operators' salaries, and the latter should be shown under expenses of operation as amounts actually paid whether as commissions or as straight salaries.

The testimony shows further that, in addition to commissions paid by The Pacific Telephone and Telegraph Company, the applicant is allowed by that company \$5.00 per month in lieu of any office rent, which amount has not in any way been accounted for either under receipts or expenses. The corrected classification referred to above, showing subscribers in service on the date of this hearing, shows a total monthly revenue from subscribers' monthly rates of \$103 instead of \$85.50 as was originally shown by "Exhibit A." This corrected classification as submitted by the applicant is as follows:

<i>Number of stations</i>	<i>Class</i>	<i>Rate</i>	<i>Revenue</i>
<i>Business Stations.</i>			
16	One-party	\$2 50	\$40 00
4	Ten-party	1 00	4 00
1	Ten-party	1 50	1 50
6	Extensions	1 00	6 00
<i>Residence Stations.</i>			
5	Ten-party	1 50	7 50
34	Ten-party	1 00	34 00
2	Toll stations	5 00	10 00
			<hr/>
			\$103 00

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The Pacific Telephone and Telegraph Company was directed, on September 11, 1913, to file with the Commission a statement showing the amount actually paid in commissions to the applicant from January 1 to September 1, 1913, and the total amount of its toll charges on messages originating on the applicant's lines for an average period of six months. This statement has been filed and shows that, during the period of eight months from January 1st, the applicant was paid an average of \$31.40 in commissions by The Pacific Telephone and Telegraph Company. Taking the applicant's "Exhibit B" as representing 85 per cent. of the average monthly amount of his own line tolls, I find that the total monthly average toll revenue from this source is \$5.30. Adding to these two items of toll revenue the sum of \$5.00 per month allowed by The Pacific Telephone and Telegraph Company in lieu of office rent, the total monthly receipts appear as follows:

Subscribers' rentals	\$103 00
Pacific company tolls.....	\$31 40
Line charges	5 30
	<hr/> \$36 70
Allowance by Pacific company.....	5 00
	<hr/>
TOTAL	\$144 70
Deduct operating expenses, "Exhibit C".....	149 10
	<hr/>
Monthly deficit	\$4 40
	<hr/>
Yearly deficit	\$52 80
Add to the annual deficit 6 per cent. interest on the investment claimed by the applicant (\$4,901.50, "Exhibit D").....	294 09
	<hr/>
TOTAL ANNUAL DEFICIT.....	\$346 89

On this basis the applicant would be operating at a loss of 7 per cent. on his investment.

The Pacific Telephone and Telegraph Company is now paying the applicant 15 per cent. on originating tolls and 3 cents on incoming messages. The applicant is entitled

to 30 per cent. of these originating tolls or its equivalent divided between originating and incoming business. In its statement filed with the Commission, The Pacific Telephone and Telegraph Company shows that its originating tolls, for the period of six months above referred to under the rates then in effect but which have since been revised by order of the Commission, amounted to \$1,121.80. Under the revised rates ordered by the Commission, this amount would be reduced to approximately \$1,049.80. The payment of 30 per cent. on the latter amount would be approximately \$52.45 per month and with the operating expenses shown in "Exhibit C" would reduce the annual deficit to approximately 2 per cent. of the investment claimed by applicant.

With reference to this statement of operating expenses, it will be noted an item of \$90.00 is included for salary of manager. According to the testimony, this amount is claimed by the applicant himself as manager, although he admitted that he resides in Los Angeles, where he is engaged in other business pursuits which occupy most of his time and attention. Occasional trips to Lancaster, averaging two or three per month, are necessary according to the evidence, and it is also necessary at times to employ a lineman in installing telephones, clearing trouble on the applicant's lines, etc., and the applicant states that he has paid for these expenses out of his personal funds. It is, of course, plain that such items of expense should come out of the proceeds of the business in whatever manner it may be proper to handle them, but it is apparent that the responsibility for the conduct of this business has been left largely to others and it is my opinion that the salary expense under the present plan of management is not a legitimate expense and should not be allowed.

With reference to the employment of linemen, the applicant testified that this expense averages approximately \$48.00 per month. It will be seen by reference to the statement of expense that an item of \$25.00 has already been

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charged to maintenance, and if \$50.00 per month were allowed for this expense it would seem that this amount should be amply sufficient, since, according to the testimony, the total average expense of employing linemen including those costs which are not properly chargeable to maintenance, are under this amount.

Operators' salaries, including commissions, are shown in the statement of expenses to be \$40.00 per month. Service is now furnished during twelve hours of the day. There is more or less demand from the patrons of this company for additional hours of service, and some of those desiring this have expressed a willingness to pay a higher rate if additional hours are granted. Others have protested against the increases for which the applicant is petitioning unless continuous twenty-four hour service be granted. From the testimony it is not apparent that the present necessities of this community justify the additional expense which would be involved in providing twenty-four hour service, but it is my opinion that not less than sixteen hours' service is desirable. To provide for this additional cost, I am willing to recommend that the applicant be allowed \$10.00 per month additional for operators' salaries, which, according to his own estimate, will be sufficient to meet this additional expense.

Referring now to "Exhibit D," which is a statement of investment, this statement is not given in sufficient detail to indicate to the Commission that this valuation is reasonable and the applicant was accordingly directed to file an itemized inventory and appraisal of his property. This the applicant has done, but in this inventory the property is appraised at \$5,684.83 instead of \$4,901.50, the value originally claimed as shown by "Exhibit D." This revised valuation includes an item reading "Reconstruction, \$300," which the testimony shows was also included under the expenses of operation as a maintenance charge. It appears that the amount is that which is figured as the

average annual expense of repairs and up keep and as such should not be taken into capital account.

The revised valuation includes also supplies valued at \$846.81. This amount represents approximately 18 per cent. of the applicant's own estimate of value of plant in service, and while it is, of course, necessary that a telephone utility carry a sufficient amount of supplies in stock to meet ordinary and reasonable requirements, there is apparently no justification for burdening rates with interest on a greater amount of supplies than the actual necessities of the business require.

Eliminating for the present these two items, amounting to \$1,146.81, the value of the plant actually in service according to this inventory is \$4,538.02. A careful examination of this inventory has been made by the Commission's telephone expert who finds, by applying average unit costs to the various items of plant contained in this system and by allowing average costs for subscribers' drop wires and for subscribers' station installations, which two items are not included in the inventory but to which the applicant is entitled, and by allowing 15 per cent. for overhead charges, which the Commission's expert believes to be a reasonable allowance in this case, that the cost of reproducing this plant new would be \$4,463.59. This estimate of reproduction cost is so close to the applicant's valuation of the property that the applicant's valuation might be accepted by the Commission were it not for the fact, which is shown by the testimony, that no provision whatever has been made in the past for taking care of depreciation of the property. The applicant testified that portions of the plant which were originally valued at approximately \$2,000 are nine years old; another portion originally valued at approximately \$200 is three years old, and the balance of the plant is approximately one year old. Certain portions of the plant have been paid for by the applicant's patrons in the form of bonuses, but the total amount received in this way is so small as to be negligible. It is

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apparent, however, that the present value of these other portions of the plant is not what they originally cost. The present value should, therefore, be determined as the basis for fixing rates and hereafter the applicant should be required to provide a depreciation fund out of revenues sufficient to maintain the plant to a proper or reasonable standard of efficiency.

It is evident that to deduct the average rate of depreciation claimed by telephone companies generally to determine the present valuation, the rate claimed by the various companies varying from $6\frac{1}{2}$ per cent. to 10 per cent., would be to deny the applicant credit for such work as has been actually necessary to keep the system working in the past. In my opinion, therefore, 4 per cent. will fairly represent this depreciated value. On the basis of unit costs above referred to, the present value, after deducting 4 per cent. for these years, would be \$3,629.05.

With reference to supplies, other telephone companies as a rule carry less than 2 per cent. of the value of the plant which is in service. This amount would perhaps not be sufficient for the smaller companies and, under the circumstances in this case, I feel that this applicant should not be limited to this amount. An allowance of approximately $6\frac{3}{4}$ per cent. of the total plant value would be \$245.95, and although this percentage for supplies is more than should be ordinarily allowed, the amount in actual value is relatively unimportant and would bring the total valuation, inclusive of supplies, up to \$3,875.

Summarizing the situation from the foregoing, I find that the present revenues, expenses and investment are as follows:

Revenues.

Subscribers' rentals	\$103 00	
Tolls	36 70	
Allowance by Pacific company.....	5 00	
		<hr/> \$144 70

Expenses (exclusive of manager's salary, \$90.00).

Rent, light and heat.....	\$14 00	
Operators' salaries	40 00	
Printing, postage and stationery.....	3 00	
Maintenance	25 00	
		<hr/> \$82 00

Net revenues per month.....	\$62 70
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Net revenues per year.....	\$752 40
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Investment.

Commission valuation, less depreciated value and including supplies	\$3,875 00
Applicant's valuation less maintenance only.....	5,384 83

Rate of return on investment.

	<i>Per cent.</i>
Commission's valuation	19.4
Applicant's valuation	13.95

This showing, however, does not allow anything additional for the payment of linemen's wages, which I have pointed out above should be allowed if the manager's salary is denied, nor does it allow for a future depreciation fund.

In its decision No. 1008,* in Case No. 387, which was a complaint of the city of San Jose involving the rates of The Pacific Telephone and Telegraph Company in San Jose and other adjacent cities, the Commission found, after considering all the facts in that case, that 5½ per cent. would be a proper amount to be set aside for depreciation, and, while this amount was not fixed upon as a precedent to be followed in other cases, it is my opinion that it would be a reasonable rate in this case. By allowing \$300 a year additional for linemen's wages and 5½ per cent. for de-

* Printed in Commission Leaflet No. 24, at page 370.—Ed.

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preciation, the rate of return on the Commission's valuation would be approximately 6 per cent.

By applying the rates which the applicant desires to charge and by including the payment of 30 per cent. by The Pacific Telephone and Telegraph Company, and by adding to operating costs \$10.00 per month for operators' salaries, \$25.00 per month to maintenance and $5\frac{1}{2}$ per cent. for depreciation, the result would appear as follows:

Revenues.

Subscribers' rentals	\$135 00
Commissions on tolls	\$52 45
Line charges	5 30
	<hr/> 57 75
TOTAL REVENUES	\$192 75

Expenses.

Rent, light and heat.....	\$14 00
Operators	50 00
Printing, postage and stationery.....	3 00
Maintenance	50 00
Depreciation	17 55
	<hr/>
TOTAL EXPENSES	\$134 75

Net revenue per month.....	\$58 00
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Net revenue per year.....	\$696 00
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Rate of return on investment.

	<i>Per cent.</i>
Commission's valuation	17.96
Applicant's valuation	11.3

It will be noted by reference to the schedule of rates which the applicant desires to charge his patrons that the rates for one- and two-party business and one-party residence service are identical. Aside from the objection to a schedule quoting similar rates for different classes of service, it is my opinion that the rates which the applicant desires to charge are unreasonable rates and that authorization to make them effective should be denied. However, as previously stated, it is my further opinion that the

present schedule of rates will admit of some modification and a revised schedule has been drawn up as follows:

COMMISSION SCHEDULE.

<i>Business.</i>		
<i>Class of service</i>	<i>Wall</i>	<i>Desk</i>
One-party	\$2 50	\$2 75
Two-party	2 00	2 25
Four-party	1 75	2 00
Ten-party	1 50	1 75
Extensions	1 00	1 00
Toll stations, \$5.00 per month.		

<i>Residence.</i>		
One-party	2 00	2 25
Two-party	1 75	2 00
Four-party	1 50	1 75
Ten-party	1 25	1 50
Extensions	1 00	1 00

Under this revised schedule, the corrected classification of subscribers and service as of the date of this hearing and the revenue resulting from these rates would be as follows:

<i>Business.</i>	
13 one-party wall at \$2.50.....	\$32 50
3 one-party desk at \$2.75.....	8 25
3 ten-party wall at \$1.50	4 50
2 ten-party desk at \$1.75.....	3 50
6 extensions at \$1.00.....	6 00
	<hr/>
	\$54 75

<i>Residence.</i>	
39 ten-party wall at \$1.25.....	48 75

<i>Toll Stations.</i>	
Two toll stations at \$5.00.....	10 00
	<hr/>
	\$113 50

This will show revenues, expenses and return on the investment as follows:

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Revenues.

Subscribers' rentals	\$113 50	
Tolls	57 75	
		<hr/> \$171 25

Expenses 134 75

Net revenues per month..... \$36 50

Net revenues per year..... 438 00

*Return on investment.**Per cent.*

Commission's valuation 11.3

Applicant's valuation 6 57

Taking as the valuation of the property the Commission's valuation of \$4,463.59, from which depreciated value has not been deducted, and allowing 2 per cent. of that amount for supplies, the return on this valuation under this schedule, allowing the same operating expenses including 5½ per cent. for depreciation, would be 8.78 per cent.

In view of the foregoing, it is my opinion that the revised schedule shown above will constitute a reasonable schedule of rates and I shall recommend its approval.

The applicant asks the Commission also for permission to charge his patrons a deposit of \$5.00, returnable after one year with interest at 6 per cent., as a guarantee that subscribers will retain service for that period. So many complaints have reached the Commission from the patrons of various utilities in this State with reference to deposits that the Commission will in the near future institute proceedings calling into question the reasonableness of this practice, and while not denying the right of public utilities for reasonable protection against possible losses, I deem it advisable to withhold this permission for the present.

I, therefore, recommend the following order:

ORDER.

O. F. Goodrich, doing business under the fictitious name and style of Antelope Valley Telephone Company and owning and operating a telephone system as a public utility in

the towns of Lancaster, Del Sur, Elizabeth Lake, North Portal, South Portal, Fairmont and Howards Camp and adjacent territory in Los Angeles County, California, having applied to this Commission for permission to increase the rates at present charged for patrons for telephone service and to institute a rule requiring his patrons to pay a deposit of \$5.00 as a guarantee that telephones will be retained for one year; and a hearing having been held thereon; and being fully apprised in the premises, the Commission finds as a fact:

(1) That the rates which the said applicant, O. F. Goodrich, owner of Antelope Valley Telephone Company, desires to charge his patrons for telephone service and more specifically referred to as follows:

EQUIPMENT AND RATES.

<i>Class of service</i>	<i>Business.</i>	
	<i>Wall</i>	<i>Desk</i>
One-party	\$3 00	\$3 50
Two-party	3 00	3 50
Four-party	2 50	3 00
Ten-party	2 00	2 50
Extensions	1 00	1 00
<i>Residence.</i>		
One-party	\$3 00	\$3 50
Two-party	2 50	3 00
Four-party	2 00	2 50
Ten-party	1 50	2 00
Extensions	1 00	1 00

Toll stations, \$5.00 per month.

are unjust and unreasonable.

(2) The Commission further finds as a fact that the following rates are just and reasonable rates to be charged by the applicant herein for the service indicated in the towns of Lancaster, Del Sur, Elizabeth Lake, North Portal, South Portal, Fairmont and Howards Camp and adjacent territory in Los Angeles County, California.

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Business.

<i>Class of service</i>	<i>Wall</i>	<i>Desk</i>
One-party	\$2 50	\$2 75
Two-party	2 00	2 25
Four-party	1 75	2 00
Ten-party	1 50	1 75
Extensions	1 00	1 00

Residence.

One-party	\$2 00	\$2 25
Two-party	1 75	2 00
Four-party	1 50	1 75
Ten-party	1 25	1 50
Extensions	1 00	1 00

And basing its conclusions upon the foregoing findings of fact.

It is hereby ordered (1) That the application herein for permission to charge patrons of said Antelope Valley Telephone Company rates for service as follows:

EQUIPMENT AND RATES.

Business.

<i>Class of service</i>	<i>Wall</i>	<i>Desk</i>
One-party	\$3 00	\$3 50
Two-party	3 00	3 50
Four-party	2 50	3 00
Ten-party	2 00	2 50
Extensions	1 00	1 00

Toll stations, \$5.00 per month.

Residence.

One-party	\$3 00	\$3 50
Two-party	2 50	3 00
Four-party	2 00	2 50
Ten-party	1 50	2 00
Extensions	1 00	1 00

Toll stations, \$5.00 per month.

be, and the same hereby is, denied.

(2) That permission be, and the same hereby is, granted to said applicant, O. F. Goodrich, to charge patrons of the said Antelope Valley Telephone Company, the following rates which are found to be just and reasonable rates to be charged by the said applicant herein for the service indicated:

<i>Business.</i>		
<i>Class of service</i>	<i>Wall</i>	<i>Desk</i>
One-party	\$2 50	\$2 75
Two-party	2 00	2 25
Four-party	1 75	2 00
Ten-party	1 50	1 75
Extensions	1 00	1 00
Toll stations, \$5.00 per month.		

<i>Residence.</i>			
One-party	\$2 00	\$2 25	
Two-party	1 75	2 00	
Four-party	1 50	1 75	
Ten-party	1 25	1 50	
Extensions	1 00	1 00	

Provided, That the applicant herein shall provide not less than sixteen (16) hours continuous service each day, Sundays and legal holidays excepted.

And provided further, That, pending the further order of this Commission, the applicant herein shall not be permitted to require his patrons or prospective patrons to pay a deposit before installing telephones.

This order to be and become effective after thirty days from the date of filing with this Commission on the part of the applicant of a schedule of rates as hereinabove provided for.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-eighth day of April, 1914.

DISTRICT OF COLUMBIA.

Public Utilities Commission.

IN THE MATTER OF FLAT RATE BUSINESS SERVICE BY THE
CHESAPEAKE AND POTOMAC TELEPHONE COMPANY.

Formal Case No. 34.

Decided May 4, 1914.

**Rendering of Business Service at Flat Rates Held to Be Discriminatory
under Public Utilities Act.**

OPINION.

HARDING, *Chairman*:

The Public Utilities Commission of the District of Columbia has before it the complaint of the Brooklyn *Daily Eagle*, by its Washington correspondent, Mr. E. C. Brainerd, that The Chesapeake and Potomac Telephone Company desires to cancel an existing contract between the said telephone company and the Brooklyn *Daily Eagle*. By the terms of this contract the complainant receives an unlimited commercial telephone service for a stipulated sum. The contract runs for a period of one year and contains a provision that

“Either the company, or the subscriber, may terminate any contract for telephone service, after the expiration of the term for which it was made, by giving ten days’ notice in writing to the other party to such contract, but every such contract shall be deemed as continuing on the same terms, after the expiration of such term, unless it is terminated by such notice.”

This class of service, known as flat rate business service, was filed with the Public Utilities Commission by the said telephone company as an obsolete rate. The term of the contract has expired, and the question before the Commission is: Does the continuance in force of the services provided by this contract and other contracts of like character

constitute a discriminatory rate in violation of the public utilities law? The Commission adopts the opinion of its general counsel that the flat rate business service above referred to is discriminatory in the meaning of the law and that the continuance in force of this and similar contracts discriminates against new subscribers who are refused similar service by the telephone company and perpetuates the very inequality of service which the public utilities law was enacted to prevent.

The Commission is, therefore, of the opinion that the flat rate business service is unlawful because of such discrimination and that the telephone company and all persons receiving this class of service under contracts similar to that referred to above are subject to the fines prescribed by the public utilities law.

ILLINOIS.

State Public Utilities Commission.

IN THE MATTER OF RATES OR CHARGES APPLICABLE TO STOCKHOLDERS, DIRECTORS OR OFFICERS OF PUBLIC UTILITIES.

Conference Ruling No. 8.

Dated April 24, 1914.

Rates to Stockholders and Non-Stockholders.

CONFERENCE RULING.

This Commission holds that it is unlawful to exact a higher rate from subscribers who are not stockholders, directors and officers than from subscribers who are stockholders, directors and officers; that the subscriber who is a stockholder has no rights or privileges which are denied to a subscriber who is not a stockholder, and the stockholder must look to the profits of the business for his return on his investment.

By order of the Commission this twenty-fourth day of April, 1914, dated at Springfield, Illinois.

PIKE COUNTY TELEPHONE COMPANY v. CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY. IN THE MATTER OF THE PETITION OF THE PIKE COUNTY TELEPHONE COMPANY FOR PERMISSION TO CROSS THE RIGHT OF WAY AND TRACKS OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY AT NEW CANTON, ILLINOIS.

No. 795.

Decided April 24, 1914.

Telephone Company Granted Permission to Construct Its Lines across Right of Way of Railroad Company — Wire Clearances.

ORDER.

The petitioner in this case, the Pike County Telephone Company, with Pittsfield as its principal place of business,

is engaged in the operation of a telephone system in New Canton, Illinois, and, in the extension of its telephone system, it is necessary to cross the right of way and tracks of the Chicago, Burlington and Quincy Railroad Company at the said station of New Canton, as indicated on plans on file.

The Chicago, Burlington and Quincy Railroad Company, the respondent in this case, offers no objection to the place and manner of crossing as evidenced by a communication from this company dated April 4, 1914, and contract entered into by and between the parties hereto, dated April 1, 1914; and the chief engineer having examined and approved the plans of the proposed crossing, and the Commission being fully advised in the premises,

It is, therefore, ordered, adjudged and decreed, That the Pike County Telephone Company be, and the same is hereby, permitted to cross the right of way and tracks of the said Chicago, Burlington and Quincy Railroad Company, with two non-insulated telephone wires at New Canton, county of Pike, State of Illinois, as indicated by location shown on plan attached to the aforesaid contract and made a part of this order.

It is further provided, That the telephone wires of the petitioner which span the tracks and right of way of the said Chicago, Burlington and Quincy Railroad Company shall have a vertical clearance of not less than 25 feet where these wires cross the tracks, and a vertical clearance of not less than 4 feet where they cross the telephone and telegraph and other wires which may be located on the property of the respondent company.

By order of the Commission this twenty-fourth day of April, A. D. 1914, dated at Springfield, Illinois.

KANSAS.

Public Utilities Commission.

**IN THE MATTER OF THE APPLICATION OF THE WELLSVILLE
CO-OPERATIVE TELEPHONE ASSOCIATION FOR PERMISSION
TO PUBLISH A RATE OF \$1.25 PER MONTH FOR DESK
TELEPHONES.**

Docket No. 803.

Dated May 9, 1914.

Approval of Rate for Desk Telephones.

ORDER.

On the second day of May, 1914, came on to be heard the application of the Wellsville Co-operative Telephone Association, a corporation, of Wellsville, Kansas, for permission to put into effect a rate of \$1.25 per month per telephone for desk telephones, the same to take effect May 1, 1914, the applicant being represented by *James E. Mal-lory*, manager, and due and legal notice having been published. And after hearing the application and taking the testimony, the matter was taken under advisement.

And now on this ninth day of May, 1914, having reviewed the record and examined into the merits of the application, and being duly advised in the premises, the Commission does find that the prayer of the petitioner should be granted in so far that it be permitted to file an amended schedule of rates showing a charge of \$1.25 per month per telephone for desk telephones.

It is, therefore, by the Commission ordered, That the Wellsville Co-operative Telephone Association of Wellsville, Kansas, be, and it is hereby, authorized to file in this office an amended schedule of rates showing a charge of \$1.25 per month per telephone for desk telephones.

It is further ordered, That said amended schedule of rates be filed within thirty days from the date hereof and that the said rate be effective at the expiration of thirty days from the date hereof and so remain until the further order of this Commission.

IN THE MATTER OF THE APPLICATION OF THE UNITED TELEPHONE COMPANY FOR AUTHORITY TO ISSUE ITS STOCK IN THE AMOUNT OF \$65,000.

Docket No. 783.

Decided May 15, 1914.

Issuance of Stock for Purchase of Telephone Property and Construction of Toll Lines.

ORDER.

Be it remembered that on this fifteenth day of May, 1914, the above matter came duly on to be finally heard before the Public Utilities Commission of the State of Kansas, at its office in Topeka, Kansas, upon the petition and application of the United Telephone Company, heretofore filed, and the evidence introduced thereunder, the said company appearing by *A. T. Rodgers*, its president, *E. L. Brown*, its secretary and treasurer, and *J. O. Wilson*, as counsel. And the Commission, after hearing the said evidence and being duly advised in the premises, does, upon consideration, find that the statements set forth in the said application are true in substance and in fact and that the United Telephone Company is entitled, in part, to the relief prayed for in the said application, and is entitled to have authority and power granted by the Commission to issue additional capital stock in the sum of \$54,500.

It is, therefore, by the Commission considered and ordered, That the United Telephone Company be, and it is hereby, authorized and empowered to issue its capital stock in the sum of \$54,500, as follows, to wit:

For the purchase of the property of the Enterprise Telephone Company of Phillipsburg, Kansas	\$36,000
For the purpose of building a toll line from Phillipsburg to Norton, Kansas, a distance of 36 miles, one No. 10 copper circuit and one No. 10 iron circuit.....	11,000
For the purpose of building a toll line from Phillipsburg to Stockton, Kansas, a distance of 25 miles.....	7,500
<hr/>	
TOTAL	\$54,500

It is further considered and ordered, That the said capital stock hereby authorized to be issued shall be sold for cash at not less than par, and that the proceeds for the sale of said stock by the said United Telephone Company shall be expended and applied only for the purposes herein designated and for no other.

NORTHEAST KANSAS TELEPHONE COMPANY OF HIAWATHA, KANSAS, v. THE HIAWATHA MUTUAL TELEPHONE COMPANY OF HIAWATHA, KANSAS, THE MORRILL MUTUAL TELEPHONE COMPANY OF MORRILL, KANSAS, AND THE ROBINSON MUTUAL TELEPHONE COMPANY OF ROBINSON, KANSAS.

Docket No. 728.

Decided May 21, 1914.

Installation of Telephones in Local Offices of Telephone Company.

ORDER.

This case being at issue upon complaint and answers filed, and having been duly heard and submitted by the parties, and investigation of the matters and things involved having been had on March 3, 1914, and the Commission having, on the twenty-first day of May, 1914, made and filed its report containing its findings of facts and conclusions thereon.

It is now, therefore, ordered, That the prayer of the Northeast Kansas Telephone Company of Hiawatha, Kan-

sas, be granted, and the Hiawatha Mutual Telephone Company of Hiawatha, Kansas, be, and it is hereby, ordered and directed to install one of its telephones in the office of the complainant at Hiawatha, Kansas; that the Robinson Mutual Telephone Company of Robinson, Kansas, be, and it is hereby, ordered and directed to install one of its telephones in the office of the complainant at Robinson, Kansas; that the Morrill Mutual Telephone Company of Morrill, Kansas, be, and it is hereby, ordered and directed to install one of its telephones in the office of the complainant at Morrill, Kansas. Said telephones to be used by the complainant only in the transaction of its usual course of business and to be paid for at the regular published rate of the respondent companies.

It is further ordered, That the respondent companies install the required telephones and furnish the required service on and after thirty days from the date hereof, and report their compliance with this order to this Commission.

IN THE MATTER OF THE APPLICATION OF THE CANTON TELEPHONE COMPANY FOR PERMISSION TO MAKE CERTAIN CHANGES AND ADJUSTMENTS IN ITS RATES FOR TELEPHONE SERVICE AT CANTON, KANSAS.

Docket No. 788.

Decided May 21, 1914.

Approval of Amended Schedule of Rates for Telephonic Service — Approval of Rules as to Payment for Service.

ORDER.

This case being at issue upon application and having been duly heard and submitted, and an investigation of the matters and things involved having been had on May 14, 1914, and the Commission having, on the nineteenth day of May, 1914, made and filed its report containing its findings of facts and conclusions thereon,

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It is now, therefore, ordered, That the Canton Telephone Company of Canton, Kansas, be permitted to file with the Commission an amended schedule of rates as follows, to wit:

GROUNDED CIRCUIT.

	<i>Business</i>	<i>Residence</i>
Individual line	\$1 50	\$1 00
Two-party line .....	.....	75
Three-party line .....	.....	75
Four-party line .....	.....	75
Desk telephone, extra per month.....	25	25
Farm lines .....	.....	1 00
Extension sets	50	50
Rural lines, switching rates per month.....	.....	25

It is further ordered, That the said company be permitted to file the following rules, to wit:

Terms of payment: Monthly in advance, excepting rural telephones on switching rates to be three months in advance.

The officers of each rural line switched will be required to contract with the company. The contract for service will be made with these officers of the lines and all charges against the subscribers on the line will be billed to such officers, and failure to pay any part of the charges due will entitle the company to disconnect the line until such charges are paid.

It is further ordered, That the said Canton Telephone Company file the amended schedule and rules herein provided for within thirty days, and that the same become effective on July 1, 1914, and so remain until the further order of the Commission.

LOUISIANA.

Railroad Commission.

RAILROAD COMMISSION OF LOUISIANA *v.* LOUISIANA WESTERN
RAILROAD COMPANY AND THE WESTERN UNION TELE-
GRAPH COMPANY.

No. 2115.

Order No. 1736.

Decided May 26, 1914.

**Closing of Local Office by Telegraph Company — Penalty Imposed —
Company Ordered to Re-open Office.**

OPINION AND ORDER.

This cause came on to be heard according to assignment, and was accordingly taken up on May 25, 1914, at Baton Rouge, Louisiana, and a full investigation made.

The proceeding was instituted by the Commission, upon its own motion, upon receipt of a numerously signed petition of the citizens of the vicinity of Hayes, Louisiana.

The complaint made was that the Louisiana Western Railroad Company and The Western Union Telegraph Company had closed or discontinued the telegraph office at Hayes, Louisiana, to the great inconvenience and annoyance of the people of the neighborhood.

The Commission's investigation brought out the fact that the telegraph office, or station, in question had been closed, and that no authority of the Commission granting permission for the said closing or discontinuance had been issued, or applied for.

Rule No. 81 of the revised rules and regulations of the Commission provides that no telegraph office where messages are received and transmitted shall be discontinued without first obtaining the consent of the Commission.

The record also shows that the vicinity of Hayes, Louisiana, is thickly settled, and that the community is in need of

a telegraph office; that the telegraph office or station at Hayes is the only office of its kind between Lake Charles and Lake Arthur, and that its discontinuance is an unnecessary hardship upon the people of the neighborhood.

The Commission believes from the evidence brought out at the trial that the arrangement between the defendant companies relative to the establishment and maintenance of this office or station is such that both companies are liable for the violation of the rule.

The premises considered,

It is ordered, That the Louisiana Western Railroad Company and The Western Union Telegraph Company be, and they are hereby, commanded and required to each forfeit and pay to the State of Louisiana, the sum of \$100 for violating the provisions of Rule Number 81 of the revised rules and regulations of the Railroad Commission of Louisiana, by closing or discontinuing the telegraph office or station at Hayes, Louisiana, without the consent of the said Commission; and the Attorney-General is requested to institute suit to recover this fine.

It is further ordered, That The Western Union Telegraph Company be, and it is hereby, commanded and required, within fifteen days from the date of this order, to re-open and continue in operation thereafter, the telegraph office or station at Hayes, Louisiana.

Baton Rouge, Louisiana, May 26, 1914.*

* A similar order was issued in *Railroad Commission of Louisiana v. Morgan's Louisiana and Texas Railroad and Steamship Company and The Western Union Telegraph Company*. No. 2117. Order No. 1737. May 26, 1914.—Ed.

MASSACHUSETTS.

Public Service Commission.

**IN THE MATTER OF MODIFYING THE NEW ENGLAND TELEPHONE
AND TELEGRAPH COMPANY'S REGULATIONS CONCERNING
THE INSTALLATION OF PORTABLE DESK SET CORDS.**

P. S. C. 242.

Dated May 26, 1914.

**Approval of Modification of Telephone Company's Regulations as to the
Length of Portable Desk Set Cords.**

STATEMENT.

Supplementing the tentative decision of the New England Telephone and Telegraph Company of April 25, to grant a modification of the company's regulations concerning the installation of portable desk set cords, the Commission is in receipt of the following letter from the telephone company which is self explanatory and which the Commission approves as tending to afford a greater measure of convenience to the public along the lines of several similar changes which have been brought about through the company's co-operation with the Commission:

"Relative to our several conferences with the Commission concerning a modification of the regulation limiting the length of cords on portable desk telephone instruments, it is agreed, I understand, that the indiscriminate use of long cords of varying lengths would result in serious service and maintenance difficulties.

"On the other hand, the rule which has limited the length of cords in all cases, except those of sickness, to a maximum of 12 feet has allowed no latitude for the care of such cases as presented unusual conditions.

"The solution of the problem would seem to lie in giving the managers authority to install cords longer than the standard lengths where reasonable necessity appears but not to exceed 25 feet, and instructions have been given in accordance with this modification. In cases of emergency and sickness, the present regulation will continue.

"It is felt that this modification will lend itself readily to the satisfactory care of exceptional conditions and it is hoped that no serious service or maintenance difficulties will follow. If, however, after a reasonable trial, it should appear that further modification is desirable or necessary, the company will ask that it be allowed to bring the matter to the attention of the Commission for that purpose."

NEBRASKA.

State Railway Commission.

IN THE MATTER OF THE APPLICATION OF THE NEBRASKA TELEPHONE COMPANY FOR AUTHORITY TO ISSUE AND SELL ITS NOTES IN THE AMOUNT OF \$4,000,000.

Application No. 2071.

Decided April 4, 1914.

Authorization of Note Issue — Refunding of Outstanding Demand Notes.

APPEARANCES:

Guy H. Pratt and W. A. Pixley, for applicant.

ORDER.

By the Commission:

This matter came on to be heard on the petition of the applicant herein for authority to issue and sell its two-year 6 per cent. notes, at par, in the amount of \$4,000,000, for the purpose of refunding and retiring an equal amount of demand notes, for which the company realized in cash the full face value, and which they have borrowed from time to time and in such amounts as were at the time needed for extensions to and betterments of the company's plant, together with purchases of certain properties and holdings in other telephone companies for the purpose of extending the service of the applicant.

The company submitted the following balance sheet, showing the assets and liabilities of the company as of February 28, 1914:

ASSETS.

TOTAL INTANGIBLE CAPITAL		\$19 16
Right of way.....	\$39,246	56
Land and buildings.....	755,859	42
Central office equipment.....	1,215,092	84
Station equipment	874,692	34
Exchange lines	3,963,514	93
Toll lines	2,516,509	18
Other plant	15,385	34
Construction work in progress.....	25,711	84
		<hr/>
TOTAL PLANT		\$9,406,012 45
		<hr/>
General equipment	\$74,500	94
Investment securities	4,186,588	35
Advances to system corporations for construction, etc.	308,520	30
Miscellaneous investments	493,007	48
		<hr/>
TOTAL PERMANENT AND LONG TERM INVESTMENTS...		\$5,062,617 07
Cash and deposits.....	\$269,813	39
Marketable securities.....	5,350	00
Bills receivable	11,088	18
Accounts receivable	222,037	69
Materials and supplies	143,008	21
		<hr/>
TOTAL WORKING ASSETS		\$651,297 47
		<hr/>
ACCRUED INCOME NOT DUE.....		\$20,284 50
Prepayments	\$7,124	67
Other deferred debits	8	10
		<hr/>
TOTAL DEFERRED DEBIT ITEMS.....		\$7,132 77
		<hr/>
TOTAL ASSETS		\$15,147,363 42
		<hr/>

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LIABILITIES.

Capital stock, common, (authorized, \$10,- 000,000)	\$6,000,000 00	
TOTAL CAPITAL STOCK LIABILITY	\$6,000,000 00	
Advances from system corporations for construction, etc. .	5,453,000 00	
TOTAL CAPITAL LIABILITIES	\$11,453,000 00	
Bills payable	\$314,261 32	
Accounts payable	126,489 36	
TOTAL WORKING LIABILITIES	\$440,750 68	
ACCRUED LIABILITIES NOT DUE	\$24,133 31	
Insurance and casualty reserves.....	4,021 33	
Liability for employees' benefit fund.....	104,427 69	
TOTAL DEFERRED CREDIT ITEMS	108,449 02	
Reserve for accrued depreciation.....	\$1,510,604 04	
TOTAL FIXED CAPITAL RESERVES	1,510,604 04	
Undivided profits, 1914.	\$68,433 28	
Appropriated surplus	3,938 29	
Corporate surplus unappropriated	1,538,054 80	
TOTAL SURPLUS AND UNDIVIDED PROFITS	1,610,426 37	
TOTAL LIABILITIES	\$15,147,363 42	

An examination of the books and accounts of the company by the Commission's accountant discloses the fact that the company received 100 per cent. on the dollar, in cash, for the notes desired to be refunded, and that it is a lawful existing indebtedness.

The Commission, upon consideration of the application herein and the report of its accountant, and being fully advised in the premises, finds that the Nebraska Telephone Company has outstanding \$4,000,000 of demand notes, which is a lawful existing indebtedness of the company and for which it received in cash 100 cents on the dollar, and that said company should be authorized to refund said indebtedness by the execution and issuance of its two-year

notes in the sum of \$4,000,000, bearing interest at not to exceed 6 per cent. per annum.

It is, therefore, ordered, That the Nebraska Telephone Company be, and the same is hereby, authorized to refund its demand notes in the sum of \$4,000,000 by the execution and issuance of its two-year notes in the sum of \$4,000,000, said notes to bear interest at a rate not to exceed 6 per cent. per annum, and the proceeds of the sale of said two-year notes to be used for the purpose only of refunding said demand notes and none other.

Made and entered at Lincoln, Nebraska, this fourth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR A READJUSTMENT OF RATES AT YORK EXCHANGE.

Application No. 1552.

Decided April 10, 1914.

Approval of Schedule of Rates for Exchange Service — Reduction of Rates for Toll Service — Flat Rate for Service between Exchanges.

ORDER.

This matter came on to be heard on the petition of the applicant herein, the remonstrance filed by the objectors, and after hearing and evidence taken, the committee appointed by the objectors, after conference with the officers of the applicant, submitted the following to the Commission for its approval:

“The committee appointed by the objectors to the readjustment of exchange rates applied for by the Lincoln Telephone and Telegraph Company of the York exchange, after a careful investigation and consideration of the evidence introduced before the Railway Commission and of a supplemental report of the accounting department of this Commission and consultation with and upon advice of the attorney employed by said committee, are convinced that it will be necessary for an increase in the revenues of said company derived from its York exchange in the amount of about \$6,600 per annum, and, in the opinion of the members of said committee, the most equitable and just method of adjusting the

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rates to be charged the patrons of said exchange in order to raise the additional revenue will be accomplished by adopting the following schedule of rates:

Individual business 'phones.....	\$3 00 per month
Two-party business 'phones.....	2 50 per month
Business, county right.....	1 00 per month
Individual residence 'phones.....	1 75 per month
Two-party residence, with privilege of desk set.....	1 50 per month
Four-party residence	1 25 per month
Residence, county right	50 per month
Farm lines not exceeding 10 to a line (privilege of two exchanges)	1 50 per month
Farm lines not exceeding 10 to a line (privilege of three exchanges)	1 75 per month
Farm lines not exceeding 10 to a line (full county service)	2 00 per month

The farm service to extra towns must be taken by lines. The majority of the patrons on each line are to decide the additional exchange or exchanges desired.

To adjoining towns in the county the existing toll rate of 15 cents to be reduced to 10 cents.

Business extensions	\$1 00 per month
Residence extensions	50 per month
Business, extra names.....	1 00 per month
Residence, extra names.....	25 per month
Extension bells	25 per month
Business extension sets.....	1 00 per month
Residence extension sets.....	50 per month
Service stations .....	..... per month

The Commission, upon consideration of the evidence adduced and the recommendations of the parties hereto, finds that the rates proposed are just and reasonable and should be approved, and that the rates for blanket county service, between the various exchanges of the company, should be as follows:

Business telephone	\$1 00 per month
Residence telephone	50 per month

It is, therefore, ordered, That, effective May 1, 1914, the Lincoln Telephone and Telegraph Company be, and the same is hereby, authorized to put into effect and to charge

[Neb.]

and collect from the subscribers of its York exchange, the following schedule of rates, to wit:

Individual business 'phones.....	\$3 00 per month
Two-party business 'phones.....	2 50 per month
Business, county right.....	1 00 per month
Individual residence 'phones.....	1 75 per month
Two-party residence with privilege of desk set.....	1 50 per month
Four-party residence	1 25 per month
Residence county right.....	50 per month
Farm lines not exceeding 10 to a line (privilege of two exchanges)	1 50 per month
Farm lines not exceeding 10 to a line (privilege of three exchanges)	1 75 per month
Farm lines not exceeding 10 to a line (full county service)	2 00 per month

The farm service to extra towns must be taken by lines. The majority of the patrons on each line are to decide the additional exchange or exchanges desired

To adjoining towns in the county the existing toll rate of 15 cents shall be reduced to 10 cents.

Business extensions	\$1 00 per month
Residence extensions	50 per month
Business, extra names.....	1 00 per month
Residence, extra names.....	25 per month
Extension bells	25 per month
Business, extension sets.....	1 00 per month
Residence, extension sets	50 per month
Service stations .....	.... per month

It is further ordered, That, effective May 1, 1914, the toll rate between any of its adjoining exchanges in York County shall not exceed the sum of 10 cents per call for a period of three minutes.

It is further ordered, That, effective May 1, 1914, the company may charge and collect for blanket county service between exchanges, the following rates, in addition to the regular exchange rate:

Business telephones	\$1 00 per month
Residence telephones	50 per month

Made and entered at Lincoln, Nebraska, this tenth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF THE MONROE INDEPENDENT TELEPHONE COMPANY FOR AUTHORITY TO ESTABLISH A NEW SCHEDULE OF RATES APPLICABLE TO ITS EXCHANGES AT NEWMAN GROVE AND GENOA.

Application No. 2069.

Decided April 10, 1914.

Approval of Rates for Exchange Service.

ORDER.

WHEREAS, the Monroe Independent Telephone Company has made application to the Nebraska State Railway Commission for authority to consolidate its exchanges at Newman Grove and its exchanges at Genoa, and to establish a new schedule of rates for said consolidated exchanges at Newman Grove and Genoa, as follows:

Grounded business 'phones	\$2 00 per month
Grounded residence 'phones	1 00 per month
Metallic business 'phones, 1-party line.....	2 50 per month
Metallic business 'phones, 2-party line.....	2 00 per month
Metallic residence 'phones, 1-party line.....	1 50 per month
Metallic residence 'phones, 2-party line.....	1 25 per month
Grounded farm line 'phones.....	1 00 per month

EXTENSION 'PHONES.

Metallic business 'phones, 1-party.....	\$0 50 per month
Metallic residence 'phones, 1-party.....	50 per month
Metallic residence 'phones, 2-party.....	50 per month
Grounded business 'phones	50 per month
Grounded residence 'phones	50 per month
Grounded farm line 'phones	50 per month
Extension bells	25 per month

Plus the necessary batteries to operate the telephones, the prices of which are hereby added and made a part of this rate.

And it appearing to the Commission upon due investigation and consideration, based in part upon repeated conferences with parties in interest, that the application is reasonable and warranted by existing conditions.

It is ordered by the Nebraska State Railway Commission,
That the rates as above authorized be, and the same are,
hereby granted, to become effective May 1, 1914.

Made and entered at Lincoln, Nebraska, this tenth day of
April, 1914.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELE-
PHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO ES-
TABLISH METALLIC CIRCUIT RATES FOR ITS GREENWOOD
EXCHANGE.

Application No. 2072.

Granted April 17, 1914.

Approval of Rates for Exchange Service.

ORDER.

WHEREAS, the Lincoln Telephone and Telegraph Com-
pany has made application to the Nebraska State Railway
Commission for authority to install the following schedule
of rates, applicable to its Greenwood exchange, namely:

Metallic Circuit.

Individual business	\$2 50 per month
Two-party business	2 00 per month
Individual residence	1 50 per month
Two-party residence	1 25 per month
Ten-party farm residence	1 50 per month
Twenty-party farm residence	1 25 per month
Inner radius: City limits.	

Additional charge outside inner radius, where there is an existing pole
line, for each quarter mile or fraction thereof, one-party, \$5.00 per year;
two-party, \$3.00 per year.

Extra service (two parties using same telephone): Business, \$1.00 per
month; residence apartments, boarding houses, etc., 50 cents per month.

Extension sets, \$1.00 per month.

Extension sets (special wall), residence only, 50 cents per month.

Extension bells, 25 cents per month.

And notice of the pendency of said application having
been served upon the city authorities of Greenwood, and no

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protests having been offered; and it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions;

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is, hereby granted, the rates as above authorized to become effective from and after June 1, 1914.

Made and entered at Lincoln, Nebraska, this seventeenth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF THE ANSLEY TELEPHONE COMPANY FOR AUTHORITY TO ESTABLISH A RATE OF \$1.25 PER MONTH FOR A BUSINESS 'PHONE ON A FARM LINE.

Application No. 2089.

Granted April 20, 1914.

Approval of Rate for Business Telephone on Farm Line.

ORDER.

WHEREAS, the Ansley Telephone Company of Ansley has made application to the Nebraska State Railway Commission for authority to establish a rate of \$1.25 per month for a business 'phone on a farm line;

And it appearing to the Commission upon due investigation and consideration, that the application is reasonable and warranted by existing conditions;

It is ordered by the Nebraska State Railway Company, That the desired authority be, and the same is, hereby granted, and the rate as above authorized to become effective from and after May 1, 1914.

Made and entered at Lincoln, Nebraska, this twentieth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF THE PLATTE VALLEY
TELEPHONE COMPANY FOR AUTHORITY TO REDUCE ITS
TOLL RATE BETWEEN SCOTTSBLUFF AND MITCHELL.

Granted April 23, 1914.

Approval of Reduction of Toll Rate at Request of Company.

INFORMAL RULING.*

Replying to your favor of April 20, 1914, in which you make request for authority to lower your toll rate between Scottsbluff and Mitchell from 25 cents to 15 cents, effective May 1, 1914.

As of this date the Commission took action upon your application as shown from the following excerpt from the minutes:

"Application having been made by the Platte Valley Telephone Company of Scottsbluff for authority to lower its toll rate between Scottsbluff and Mitchell from 25 cents to 15 cents and, it appearing to the Commission upon due investigation and consideration, that the application is reasonable and warranted by existing conditions, the desired authority was on motion granted, the rate of 15 cents as above authorized to become effective from and after May 1, 1914, and it was directed that applicant be notified by letter of the action taken."

You will please consider this letter as your authority for making the reduction above indicated.

* Informal ruling contained in a letter of the Commission, dated April 23, 1914, addressed to F. Alexander, secretary, Platte Valley Telephone Company, Scottsbluff, Nebraska, and issued over the signature of the Secretary of the Commission.—Ed.

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IN THE MATTER OF THE APPLICATION OF THE CHESTER TELEPHONE COMPANY, CHESTER, NEBRASKA, FOR AUTHORITY TO ESTABLISH METALLIC FARM LINE SERVICE.

Application No. 2090.

Dated April 23, 1914.

Approval of Establishment of Metallic Farm Line Service.

INFORMAL RULING.*

We have your favor of April 18, 1914. (Application No. 2090) in which you request authority to establish metallic farm line service, eight parties to the line, at the rate of \$15.00 per year, with the added privilege of free emergency calls during night hours. As of this date, the Commission took action upon your application, as shown by the following excerpt from the minutes:

"Application having been made by Chester Telephone Company of Chester, for authority to establish a metallic farm line service, not more than eight parties on a line, at a rate of \$15.00 each per year, with the privilege of free emergency calls at night, and it appearing to the Commission upon due investigation and consideration that the application is reasonable and warranted by existing conditions, the desired authority was on motion granted, the service and rate as above authorized to become effective from and after May 1, 1914, and it was directed that the applicant be notified by letter of the action taken."

Further answering your letter, our files show that the rate from Chester to Lincoln is 55 cents, to Omaha 90 cents and to St. Joseph, Missouri, 90 cents, instead of 50 cents, 75 cents and \$1.00 respectively as stated in your letter.

The Commission very much appreciates the reference to it as made in the submitted page of your new directory, and it is also impressed with the very careful analysis you have made of your "toll service." We sincerely wish that other

* Informal ruling contained in a letter of the Commission, dated April 23, 1914, addressed to E. L. Brown, secretary, Chester Telephone Company, Chester, Nebraska, and issued over the signature of the Secretary of the Commission.—Ed.

managers of telephone companies were giving as close scrutiny to the details of their business as you are evidently doing. The Commission directs me to request that you forward at least half dozen copies of the leaflet herein referred to, as we would like to have them for reference.

IN THE MATTER OF THE APPLICATION OF PIERCE TELEPHONE EXCHANGE, OF PIERCE, FOR AUTHORITY TO INCREASE ITS SWITCHING RATES FOR INDEPENDENT FARM LINES TO \$3.00 PER YEAR PER 'PHONE.

Application No. 2087.

Granted April 28, 1914.

Approval of Increased Rates for Switching Service Furnished Independent Rural Lines.

ORDER.

WHEREAS, the Pierce Telephone Exchange of Pierce has made application to the Nebraska State Railway Commission for authority to increase its switching rate for independent farm lines from \$2.50 per year to \$3.00 per year, per 'phone;

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions;

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is, hereby granted, the rate of \$3.00 per year per 'phone for the service as above indicated to become effective on and after May 1, 1914.

Made and entered at Lincoln, Nebraska, this twenty-eighth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF CAMBRIDGE-HOLBROOK
TELEPHONE COMPANY, OF CAMBRIDGE, FOR AUTHORITY TO
INCREASE ITS EXCHANGE RATE TO \$12.00 PER YEAR.

Application No. 2099.

Granted April 28, 1914.

Approval of Increased Rate for Exchange Service.

ORDER.

WHEREAS, the Cambridge-Holbrook Telephone Company, of Cambridge, has made application to the Nebraska State Railway Commission for authority to increase its exchange rate from \$9.00 to \$12.00 per year;

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions;

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is hereby, granted, the rate of \$12.00 per year for the service as above indicated to become effective from and after June 1, 1914.

Made and entered at Lincoln, Nebraska, this twenty-eighth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF THE CITIZENS' TELEPHONE COMPANY OF MALMO FOR AUTHORITY TO ESTABLISH A RESIDENCE INDIVIDUAL LINE RATE OF \$1.25 PER MONTH.

Application No. 2101.

Granted April 29, 1914.

Approval of Rate for Residence Service.

ORDER.

WHEREAS, Citizens' Telephone Company of Malmo has made application to the Nebraska State Railway Commis-

sion for authority to establish a rate of \$1.25 per month for residence individual line service, in connection with its exchange at Malmo, Weston, Prague and Morse Bluff;

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions;

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is hereby, granted, the residence individual line rate as above authorized to become effective from and after June 1, 1914.

Made and entered at Lincoln, Nebraska, this twenty-ninth day of April, 1914.

NEVADA.

Railroad Commission.

RAILROAD COMMISSION OF NEVADA v. BELL TELEPHONE COMPANY OF NEVADA.

Decided March 24, 1914.

Reasonableness of Charge for Extension Telephone Service.

This was a proceeding instituted by the Commission, upon its own motion, for the purpose of determining the reasonableness of the respondent's charge of \$1.00 per month for each extension telephone station installed in the same building with a main telephone station.

Reasonableness of a Particular Charge to be Determined with Reference to Value of Company's Plant and Service as a Whole.

It was alleged that the charge in question was excessive for the reason that a telephone instrument costs only from ten to fifteen dollars.

Held, That the respondent is entitled to a fair return for the service rendered, and not merely to a return upon the value of each particular instrument used in rendering the service; and

That, in determining the reasonableness of the respondent's charge, reference must be had to the value of the entire plant used in furnishing service and not to the value of some particular part thereof.

Ownership of Telephone—Disadvantages of Private Ownership of Equipment.

It was contended that subscribers should be permitted to purchase and install their own telephone instruments.

Held, That the furnishing of telephone instruments is an essential part of a telephone company's business;

That there would be no more propriety in ordering a telephone company to connect with a privately owned telephone than there would be in ordering a railroad company to permit a patron to furnish his own car or cars;

That to allow private individuals to install their own telephones and then to require the telephone company to connect such telephones with its transmission lines and switchboards might very easily lead to complications through the failure on the part of the patrons to provide instruments of standard and uniform make, and would change the character of the company from that of a public utility to that of a company owning simply certain poles, wires and switchboards.

Cost of Installation — Extension Service Distinguished from Auxiliary Service — Lower Rate for Extension Service Presented by Commission.

With respect to the respondent's contention that its rate for an extension telephone was reasonable because of the installation expense involved,

Held, That the installation of telephones is part and parcel of the general business of the telephone company, that without such installation no service can be rendered, and that the entire plant and all of the expenses of the company must be considered, without attempting to compute the exact expense incident to a particular part of the service;

That extension service, as distinguished from auxiliary service, is merely an addition to a service already existing and from which the company is deriving a fair revenue;

That "if we considered merely the value of the instruments, a charge of 50 cents per month would be excessive, but, regarding the service which is rendered, and which is of value, it seems to us that 50 cents for each extension is a fair and reasonable charge — fair to the user and fair to the company;"

That the fact that the primary charge for business service is higher, as a rule, than that for residence service, furnishes no reason why there should also be a higher charge for extension business service than for extension residence service, but rather the reverse;

That "considering the question in all its bearings, a flat rate of 50 cents per month for each extension within the same building or different parts of the same room or apartment, with or without bells, seems to be fair and reasonable."

Ordered, That the respondent charge no more than 50 cents per month for each extension telephone station installed in the same building with a main station.*

OPINION AND ORDER.

BARTINE, Chief Commissioner:

This proceeding was based upon a complaint filed with the Commission by the Nevada State Journal Publishing Company, acting through its president, Mr. George D. Kilborn. As the original complainant was not prepared to make any specific showing beyond that contained in its complaint, the Commission substituted itself as complainant, and took up the matter upon its own motion, under the provisions of Sub-division "B," Section 12, of the Railroad Commission Law of this State.

* Editor's headnote.

The gravamen of the complaint made by the original complainant was that the charges of the respondent company for extensions of the telephone service were excessive, unjust and unreasonable. These charges were orally denied by the respondent company, and the issue thus made is to be determined by this Commission.

In a case where telephone service is installed in a business establishment, the regular custom of the respondent company is to charge \$1.00 for the extension. The complainant alleged that this charge is excessive for the reason that a telephone instrument only costs from ten to fifteen dollars. Such being the case, it follows, according to complainant's contention, that the respondent company is realizing about 100 per cent. per annum upon the value of each additional instrument installed.

Assuming for the purpose of discussion, that the one-dollar rate is excessive, it does not follow that the contention of the complainant, is sound. The respondent company is entitled to a fair return for the service rendered, and not merely a return upon the value of each particular instrument used in the rendering of such service. Let us assume that in the office of the *Journal*, there were a single telephone connected with the main line. Clearly, the management would not desire additional instruments installed unless there were use for such instruments; if there were such use, then, the service must be of some value to the party receiving it.

No telephone company can render a telephone service by simply installing a telephone. There must be transmission lines, there must be the switchboard, there must be all the paraphernalia which goes to make up the full equipment of a telephone company. This plant must be considered in its entirety, and in determining the reasonableness of the rates charged, reference must be had to the value of the entire plant, and not of some particular part thereof. The principle is the same as in the case of a railroad. In determining whether passenger fares or freight rates are reasonable, we would consider, not merely the

value of the railroad car which is used in transporting the freight or the passenger, but we would consider the railroad as an entirety. We can see no reason why the same rule should not be applied to a telephone company.

It is implied by the complaint that complainant should be permitted to purchase and install its own telephones. With this view the Commission cannot agree. The furnishing of telephones is an essential part of the business of the telephone company. It has undertaken to give a complete telephone service, which can only be done by furnishing the necessary instruments. There would be no more propriety in ordering a telephone company to connect with a private telephone, than there would be in ordering a railroad company to permit every patron of the railroad to furnish his own car or cars, which would have the effect of depriving the railroad company of a very considerable portion of its business. Besides, to allow private individuals to install their own telephones, and then require the telephone company to connect such telephones with its transmission lines and switchboards, might very easily lead to complications through a failure on the part of the patrons to provide telephones of standard and uniform make. Further, the owners of such private telephones would still be under obligations to pay to the telephone company reasonable rates for the use of its wires, poles, switchboards, etc. What the charges of a telephone company might properly be under such conditions, is hard to say. It is enough, though, to add, upon this point, that if every private individual installed his own telephone, it would change the entire character of the utility—it would no longer be a telephone company. It would simply be a company owning certain poles, and wires, and switchboards.

We are equally unable to appreciate the soundness of the respondent company's contention that the extension rates are reasonable because of the installation expense. At the hearing, which took place September 27, 1913, it was claimed by representatives of the company that the installation of a telephone costs \$7.80 from which it was argued

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that the charge of \$1.00 for extensions was reasonable. We are unable to perceive any logical force in this contention. It literally proves nothing, so far as the point at issue is involved. The installing of telephones is part and parcel of the general work of a telephone company. Without such installation, no service whatever can be rendered. In deciding as to what are reasonable rates, we must consider the entire plant, and all of the expenses of the company, without attempting to figure out the exact expense incident to some particular part of the service—such as the installation of a telephone.

The Commission does not, and cannot, fail to note what appears to be an inconsistency in the attitude of public utilities in dealing with the question of reasonable rates in particular cases. In the case of common carriers, for example, the contention frequently is made that it is impossible to take a particular commodity and determine whether the rate charged for the commodity, standing by itself, is fairly remunerative. Just as frequently, when some particular commodity is charged to a higher rate than others, it is defended upon the ground that special service is required in the transportation of that commodity and, therefore, the higher rate is justified. These contradictory contentions seem to be made to meet the exigencies of differing cases as they arise.

Undoubtedly it is difficult to take particular items, going to make up the aggregate business of a public utility, and compare accurately, the relative cost of doing the work, with the revenue derived from that item. It is possible that a closer approximation can be made in the matter of installing a telephone, than with reference to carrying a certain commodity in a railroad car along with other commodities. Nevertheless, it seems to us, that any attempt to figure out the expense incident to some particular service rendered by a public utility, must, in its nature, be more or less misleading. It might well be true that the installation of a single telephone would cost \$7.80, but it by no means follows that in the general work of a telephone com-

pany, where hundreds, and perhaps thousands, of instruments are to be installed, they would average \$7.80, or anything approaching that figure. Even though it did, it is only one branch of the company's expenses. It appears to us, as before stated, that the plant should be considered as a whole. The aggregate expenses should be placed upon one side of the account, the aggregate revenue upon the other, and then a balance should be struck.

This Commission has at other times, and in other cases, deemed it necessary and proper to remark that in no great business, whether it be public or private, will each item be found equally profitable. Indeed it is well known that in many instances particular operations of any business, standing by themselves, would not yield any profit at all. So it may be conceded that, if a telephone company had but a single telephone to install, it might easily cost \$7.80 and, upon that basis of any charge that is now being made, it would be altogether unprofitable.

The classification of freights carried by a railroad is largely arbitrary. It is based upon the judgment of the traffic managers as to the general condition of the business. The same, undoubtedly, is true with respect to a telephone service. In this very case it was asserted by the representatives of the telephone company that the charges made for service in private residences were not remunerative charges, and that such rates could only be maintained for the benefit of resident users, because of the higher rates charged to business houses. Here we have a distinct admission of the soundness of our own position that the business should be considered as a whole, and not with reference to the profits or losses upon some segregated items. In determining whether or not a particular charge is excessive and unreasonable, the Commission must, likewise, use its own best judgment, based upon the facts as disclosed by its investigations.

Taking up the matter immediately under consideration, we may say that when a telephone is installed either in a residence or in a business house, and it is desired to make

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an extension to another apartment, or to another location in the same apartment, a charge of \$1.00 per month for such extension appears to be unreasonably high.

Acting upon the principle which has been laid down in this opinion, that the business of the company should be treated as a whole, and not merely with respect to the assumed expenses and revenues connected with particular items, attention should be directed to the fact that extensions are merely, as the term implies, additions to a service already being rendered, and from which business, in the aggregate, the company derives a fair and reasonable revenue. An extension is quite different from an auxiliary service, which requires a separate line connected with the main line, and which is, to all intents and purposes, an independent service in itself. An auxiliary line may be used even though the main service line is out of commission. It might, with equal propriety, be called a substitute line. But, whatever we call it, the service is complete and independent in itself. An extension is different. It is merely an addition to a service already existing and from which the company is deriving a fair revenue. Practically, the only additional expense is the installing of an instrument with a short piece of connecting wire. If we considered merely the value of the instruments, a charge of 50 cents per month would be excessive, but, regarding the service which is rendered, and which is of value, it seems to us that 50 cents for each extension is a fair and reasonable charge—fair to the user and fair to the company.

Considering the business of the company as a whole, we can see no reason why there should be any difference between an extension in a business house and an extension in a private residence. The primary charge against a business house is \$4.00, while the charge in residences, generally, is about \$1.50.

Thus, we see that in a business house, if the charge of 50 cents be made for an extension, the amount would be \$4.50; if there be two extensions, the amount would be \$5.00, and so on. The fact that the primary charge in a business house

is higher, as a rule, than in a residence, furnishes no reason why there should also be a higher charge for an extension in the business house, but rather the reverse.

Considering the question in all of its bearings, a flat rate of 50 cents per month for each extension within the same building, or different parts of the same room or apartment, with or without bells, seems to be fair and reasonable.

An order should be entered in conformity with these views.

ORDER.

Pursuant to the conclusions reached in the foregoing opinion,

It is hereby ordered, That in lieu of the present charges for extensions of telephone service, the Bell Telephone Company of Nevada shall charge no more than 50 cents per month for each separate extension, within the same building or apartment.

NEW JERSEY.

Board of Public Utility Commissioners.

In re CERTAIN ORDINANCES PRESENTED FOR APPROVAL BY PATRONS' TELEPHONE COMPANY: ORDINANCE TOWNSHIP OF HOPE, ORDINANCE TOWNSHIP OF OXFORD, ORDINANCE TOWNSHIP OF KNOWLTON, ORDINANCE TOWNSHIP OF BLAIRSTOWN; and
WEST JERSEY TOLL LINE COMPANY *v.* PATRONS' TELEPHONE COMPANY; IN OPPOSITION TO APPROVAL OF ORDINANCES ABOVE.

Decided March 31, 1914.

Public Convenience and Necessity—Approval of Ordinances Granting Franchises Withheld—Invasion of Occupied Field—Duplication of Facilities—Service of Company Occupying Field—Validation of Stock Issued Without Authority.

APPEARANCES:

George M. Shipman, for the Patrons' Telephone Company.

E. M. Simpson, for the West Jersey Toll Line Company.

REPORT.

On February 10, 1913, the Chief Inspector of Utilities called the Board's attention to the report that the Patrons' Telephone Company was extending lines into Blairstown. On February 11, the secretary, by direction of the Board, inquired of the Patrons' Telephone Company whether it has franchises from any municipality permitting the company to use public streets or roads; and if so, why said franchises had not been submitted to the Board for approval as required by statute. Under date of February 12, 1913, H. F. Aten, secretary of the Patrons' Telephone Company, made reply that his company had obtained permits for the use of public roads from the township committees of Knowlton, Hope, Oxford and Blairstown Townships.

He also indicated that the company had not been apprised of the requirement of submitting said franchises to this Board for approval. Under date of February 18, 1913, this Board informed Mr. H. F. Aten, secretary of the Patrons' Telephone Company, that he should submit to the Board the company's franchises for approval.

Under date of May 12, 1913, the West Jersey Toll Line Company, by W. S. Risley, president, protested to this Board against the action of the Patrons' Telephone Company in installing and soliciting telephones in Blairstown, claiming that the West Jersey Toll Line Company was then furnishing local telephone service in Blairstown and long distance service to the subscribers of the Patrons' *via* Blairstown and Belvidere. This letter of protest was transmitted by the Board to Mr. H. F. Aten, secretary of the Patrons' Telephone Company on May 14, 1913; and the Board fixed May 27, 1913, as the time, and the state house in Trenton as the place, for hearing upon the aforesaid protest. The Patrons' Company could not proceed on May 27, but agreed that they would not further prosecute the extensions against which protest had been made until the matter had been presented to the Board. During the summer of 1913 the Patrons' Telephone Company secured from the four townships, the approval of ordinances granting the right to use roads within said townships. Upon the application for approval of these ordinances, hearing was finally set for September 9, 1913, at the state house in Trenton, and the West Jersey Toll Line Company, objector, was notified of said hearing. Hearings were held at the state house in Trenton on September 9 and September 16, the petitioner and objector both being represented by counsel.

On the last date the matter went to conference, with the stipulation that the report of the Board's inspector upon the matter, when made, should constitute a part of the record in the case.

Of the four ordinances granting franchises it may be said generally, that the privileges granted by each and all of said ordinances would authorize the Patrons' Tele-

phone Company, at their option, to enter certain localities now supplied by the West Jersey Toll Line Company with telephone service. If, therefore, by resolution of the respective township committees the ordinances shall be amended as indicated below in this report, said ordinances might again be presented to this Board for approval with the prospect of favorable action thereon.

In particular, the franchise ordinance passed by Hope Township on February 25, 1913, after designating certain roads on which the Patrons' Telephone Company may place poles and wires, includes a blanket grant entitling the company to place poles and wires "on such other roads in said township as the Patrons' Telephone Company may think it necessary to build its line upon." It appears that Townsbury in said township is now supplied by the West Jersey Toll Line with telephone service. It is, therefore, apparent that the ordinance would permit the Patrons' Telephone Company at their option to enter Townsbury with poles and lines. This Board is on record* against unnecessary duplication of apparatus. Should said ordinance be amended so as to exclude Townsbury and the districts now supplied in said township by the West Jersey Toll Line Company, the ordinance may be again submitted to this Board for approval. As it now stands, petition for the approval of said ordinance is denied.

The ordinance passed by the township of Oxford on August 4, 1913, apparently accords to the Patrons' Telephone Company the right to supply telephone service

* See *In the Matter of the Application of the Consumers' Gas Company of Millville, for the Approval of Ordinance No. 115 of the City of Millville* decided April 18, 1913, Commission Leaflet No. 19, at page 262; *In the Matter of the Application of the Eastern Telephone and Telegraph Company for Approval of Two Ordinances Passed Respectively by the Freeholders of Cape May County and by the Borough of Avalon*, decided May 19, 1913, Commission Leaflet No. 20, at page 367, and *In the Matter of the Petition of the Jersey Power Company for Authority to Issue Stock in the Amount of Seventy-five Thousand Dollars*, decided January 27, 1914, Commission Leaflet No. 28, at page 595.—Ed.

throughout said township. A large part of the township is already supplied by the West Jersey Toll Line Company and "under conditions which are adequate, considering the character of the territory supplied." Such is the testimony of the Board's chief inspector. Moreover, the contract which the Patrons' Telephone Company made with the West Jersey Toll Line Company, which contract is in evidence in this case, implies that each company is to supply a certain portion only of said township. In order to be approved by this Board, this ordinance must be so amended as to exclude territory now supplied by West Jersey Toll Line Company. In case Buttzville is not supplied by the West Jersey Toll Line Company there appears no particular reason why the franchise as amended may not accord to the Patrons' Telephone Company the right to supply said locality.

The ordinance passed by the township of Knowlton August 9, 1913, after designating certain roads on which the Patrons' Telephone Company may place poles and wires, accords to that company the right to enter upon "such other roads in said township as the Patrons' Telephone Company may extend its lines upon." To obtain this Board's approval the ordinance must be so amended as to exclude the vicinity of Manunka Chunk and Ramseysburg. These localities, it appears, are now supplied by the West Jersey Toll Line Company. They are in general nearer to Belvidere than to Hope. It seems proper, therefore, that the telephone service to these places should continue, as at present, to be supplied by the West Jersey Toll Line Company.

From the evidence it would seem that the Yetter line lies partly in Knowlton Township. Apparently this line was located long before 1903, and, therefore, it would seem that the Yetter line might continue as originally located in Knowlton and Blairstown townships.

The ordinance granted by Blairstown Township, like the preceding ordinances, is a blanket grant to the Patrons' Telephone Company to occupy, at will, any and all public

roads or streets throughout the entire township. After designating particular roads on which the Patrons' Telephone Company are empowered to place poles and wires, the ordinance gives similar permission "on such other roads as may be deemed necessary," and similarly accords permission to enter upon "such other roads in said township as the Patrons' Telephone Company may extend their lines" (to).

The Blairstown ordinance is the essential bone of contention between the Patrons' Telephone Company and West Jersey Toll Line Company. It seems necessary, therefore, to set out the situation in somewhat greater detail than in the case of the grants by the three other townships. The Blairstown Telephone Company, an unincorporated concern, originally constructed the telephone plant which for the most part occupied the village of Blairstown. The original franchise authority was a permit granted March 23, 1901, in favor of Blair Hall Academy (unincorporated), whereby "The Blairstown Electric Light Company and Water Works," the name assumed by the concern obtaining the permit, received the privilege of setting poles along the streets and the right to hang wires thereto "for transmitting power, light or messages over and upon the public roads." It appears that this concern erected only one set of poles, and strung thereon both electric light wires and telephone wires. It was operated by Charles H. Crissman. Said Charles H. Crissman used the same line of poles for electric light wires and telephone wires and operated a central exchange in Blairstown village. In the spring of 1913, the West Jersey Toll Line Company applied to this Board for approval of its proposed acquisition of the Crissman telephone system, above described. The Board approved such acquisition, and the securities necessary to effect the same. By reason of the fact that the telephone wires were on the electric light poles, and that the telephone circuits were grounded circuits not metallic circuits, the telephone service was poor whenever the current was running through the electric light wires. Particularly at night

was the telephone service inadequate. There were about fifty or sixty 'phones connected with the local exchange. From the evidence it appears that the West Jersey Toll Line Company, after acquiring this Crissman telephone system, proceeded to improve the system and service. Within the region of electrical disturbance the grounded circuits were replaced by metallic circuits; and the evidence is indisputable that the telephone service, both local service and long distance service, has been very essentially improved.

Just before the West Jersey Toll Line Company acquired the Crissman telephone system, the Patrons' Telephone Company purchased the Yetter line. From the evidence it would seem that the Patrons' Telephone Company took title to the Yetter line between the first and fifteenth of February, and that the West Jersey Toll Line Company purchased the Crissman telephone system the latter part of the same month. The Yetter line runs from Columbia opposite Portland to Blairstown. The Patrons' Telephone Company, it would appear, had built lines north from Hope towards Blairstown and had brought some of these lines up within the confines of the village of Blairstown and had planned to connect some four or five 'phones reached by lines built north from Hope with various stations connected over the Yetter line with Blairstown. This junction of 'phones, by means of a certain exchange of the Patrons' company in Blairstown, was obstructed by the West Jersey Toll Line Company's acquisition of the Crissman telephone system.

Should this Blairstown ordinance be approved, the Patrons' Telephone Company under its authority will locate in Blairstown a central exchange. There will thus be in the same village, whose population is about six hundred, two central telephone exchanges. This Board is already on record * against the unnecessary duplication of telephone apparatus. It means generally, and it would mean in this

* See foot note at page 65 of this Leaflet.— Ed.

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particular case, imposing upon the public the evils of a divided service or a double price. We can see no sufficient reason for approving a franchise that would impose this undesirable condition upon telephone subscribers in this region.

The Patrons' Telephone Company appear to rest their claim for the approval of the Blairstown ordinance largely upon the fact that the Yetter line was located in Blairstown village, and was in working order long before the West Jersey Company had purchased any interest in the telephone business in Blairstown. Granting this fact unreservedly, it does not appear that the Yetter line ever involved the location and operation in Blairstown village of an independent central exchange. It may be granted that the Yetter line has a right to enter Blairstown. Such right does not seem to us to carry the right of the new purchasers of the Yetter line to set up an independent competing central exchange in Blairstown village.

There might have been force in the plea for the approval of the ordinances and for setting up an independent exchange, if the West Jersey Toll Line Company, on acquiring the local telephone system in Blairstown, had been negligent or derelict in improving service. The testimony is altogether to the contrary.

The evident requirement of the situation is reasonable and adequate telephonic connection between Blairstown and the surrounding country. The Board will endeavor to effect such telephonic connection by such means as are within its powers. But the pending Blairstown franchise must be reshaped so as to preclude duplication of apparatus in Blairstown village before it can have this Board's approval. In its present form petition for approval is denied.

The Patrons' Telephone Company in a communication to this Board, dated March 17, 1914, has asked the Board to afford information upon several matters. In reply thereto, the Board would say, first, that it cannot see that its assent is necessary to the termination of the present contract between the Patrons' Telephone Company and

the West Jersey Toll Line Company. The Board would say, second, that in case such contract is terminated the Patrons' Telephone Company would appear to have a right to exercise duly approved franchises covering any territory not already adequately supplied with telephone service.

The Board calls the attention of the Patrons' Telephone Company to the fact that the statute requires every public utility to obtain from this Board approval of the issue of securities. The Patrons' Telephone Company, by its own admission, has outstanding capital stock issued since the statute above mentioned became operative. Application should at once be made to validate such issue of capital stock.

Dated March 31, 1914.

NEW YORK.

Public Service Commission — Second District.

PARK CENTRAL PRESBYTERIAN SOCIETY OF SYRACUSE v. NEW YORK TELEPHONE COMPANY.

Case No. 2798.

Decided May 12, 1914.

Directory Listing — Rate for Service to Clergyman's Study in Church.

OPINION AND ORDER.

The telephone instrument involved in this proceeding is located in the pastor's study within the church edifice, but was listed in respondent's directory under the name of the church. The service rendered is a so-called two-party line. For some time previous to August 9, 1911, respondent, under contract with complainant, afforded service at a gross charge of \$30.00 per annum. The service rendered by respondent in Syracuse is classified in its tariff as "business" and "residence." The "business" service is applied to churches, the pastor's study being excepted. The "residence" rate is applied to the residence of a regularly ordained clergyman or to his study in the church when the listing is in the name of the pastor. Complainant, for reasons stated in the record, desires greatly that the telephone shall be listed in the name of the church. The regular rate now in effect for two-party line "business" service is \$48.00 per year, and for "residence" service the rate is \$30.00 per year. On August 9, 1911, complainant was required by respondent to take the "business" service at a gross charge of \$48.00 per year. Complainant contended that the increased charge of \$18.00 was unjust and unreasonable. A hearing in the matter was held in Syracuse on Thursday, October 10, 1912, at which it was suggested that the case could be settled fairly by permitting the list-

ing of the 'phone in the name of the church followed by the name of the pastor, Rev. W. R. Ferris, or by the words "Pastor's Study," and thereby effect a charge of \$30.00 per year for the service described, and this was agreed to by respondent.

In the last issue of respondent's Syracuse directory under date of January 8, 1914, the instrument in question is listed as "Park Centrl. Presby. Ch., Patr's Study" and under its tariffs may have the residence rate.

It is, therefore, ordered, That this case be and the same is hereby closed upon the records of this Commission.

OHIO.

The Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE CENTRAL DISTRICT TELEPHONE COMPANY FOR AUTHORITY TO ISSUE TWO MILLION DOLLARS, PAR VALUE, CAPITAL STOCK.*

No. 80.

Decided December 29, 1913.

Issuance of Stock — Payment of Outstanding Notes.

ORDER.

The Central District Telephone Company, a corporation organized under the laws of the State of Pennsylvania, with its principal office in the State of Ohio in the city of Steubenville, Jefferson County, Ohio, having, on the fourth day of December, 1913, filed its petition praying for the consent and authority of the Commission to the issue of its capital stock of the par value of \$2,000,000, the proceeds to be devoted to the discharge of petitioner's outstanding promissory notes, of the aggregate principal sum of \$5,505,625.40, the moneys secured by the issue thereof were expended in the acquisition of property, the construction, completion, extension and improvement of petitioner's system for furnishing telephone service within the State of Ohio and elsewhere, as fully set out in said petition and exhibits attached thereto, and the time for hearing said matter having been fixed for Tuesday, December 9, 1913, at two o'clock P. M., and due notice of the time and place of said hearing having been given, and having been heard on said day and the further consideration thereof continued from day to day, the same came on

* This case was inadvertently omitted from Commission Leaflet No. 26. See footnote at page 850 of Commission Leaflet No. 25.— Ed.

this day for final consideration upon the petition, the evidence and exhibits.

After considering the pleadings, hearing the evidence and examining the exhibits, and being fully advised in the premises, and it appearing that the proceeds of said capital stock are to be used in the payment and discharge or refunding of petitioner's present promissory notes, such indebtedness having been created and incurred in the acquisition of property and the construction, completion, extension and improvement of petitioner's plant for furnishing telephone service within the State of Ohio and elsewhere, the Commission is satisfied that the prayer of said petition should be granted.

It is, therefore, ordered, That said The Central District Telephone Company be, and it is hereby, authorized to issue its capital stock of the total par value of \$2,000,000 and that said capital stock be sold for the highest price obtainable, but for not less than the par value thereof, it being the opinion and finding of the Commission that the money to be secured by the issue and sale of said capital stock is reasonably required for the proper purposes of said corporation.

It is further ordered, That the proceeds arising from the sale of said capital stock be, by said The Central District Telephone Company, devoted to and used for the payment and discharge of said petitioner's promissory notes, made and given to The Bell Telephone Company of Pennsylvania on various dates beginning with the twenty-sixth day of November, 1909, and extending to the twenty-eighth day of November, 1913, which said notes are of the aggregate principal sum of \$5,505,625.40, as fully set out in a detailed statement submitted to this Commission on the eleventh day of December, 1913, and filed as an exhibit in this proceeding, which said statement and exhibit is hereby made a part of this order by reference.

It is further ordered, That said The Central District Telephone Company make verified report to the Commission, as follows:

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Upon the issue and sale of said capital stock, or any part thereof, the fact of such issue and sale, the terms and conditions of sale and the amounts realized therefrom, which shall be the best price obtainable, but which shall not be less than the par value thereof; at the termination of each period of thirty days from the date of this order, the disposition and use made of the proceeds of said capital stock; such reports to be made until all of said capital stock herein authorized has been issued and disposed of, and all the proceeds thereof expended in the payment and discharge of an equal amount of petitioner's said promissory notes.

Dated at Columbus, Ohio, this twenty-ninth day of December, 1913.

IN THE MATTER OF THE FILING OF SCHEDULES BY TELEPHONE
COMPANIES UNDER THE PROVISIONS OF SECTIONS 614-16,
GENERAL CODE OF OHIO.

Dated April 27, 1914.

**Duty of Telephone Company to File Rules and Regulations as to Rates
and Service.**

Held: By the attorney for the Commission, that under Sections 614-16 of the General Code of Ohio, "telephone companies should be required to include in their schedules, in addition to the rates, tolls, charges and classifications, all rules, regulations, conditions and requirements affecting the rates or service or in any manner imposing obligations or duties upon subscribers either as conditions precedent to securing service or in their relations to the company while receiving service." *

OPINION OF ATTORNEY FOR COMMISSION.†

Your Commission has requested an opinion as to what should be included in the schedules filed by the telephone companies under the provisions of Sections 614-16 General Code.

* Editor's headnote.

† Opinion contained in a letter addressed to the Commission by its attorney, under date of April 27, 1914.—Ed.

Sections 614-16, General Code, provides as follows:

"Every public utility shall print and file with the Commission, within ninety days after this act takes effect, schedules, showing all rates, joint rates, rentals, tolls, classifications and charges for service of each and every kind by it rendered or furnished, which were in effect at the time this act takes effect and the length of time the same has been in force, and all rules and regulations in any manner affecting the same. Such schedules shall be plainly printed and kept open to public inspection. The Commission shall have power to prescribe the form of every such schedule, and may, from time to time, prescribe, by order, changes in the form thereof. The Commission may establish rules and regulations for keeping such schedule open to public inspection, and may, from time to time, modify the same. A copy of such schedules or so much thereof as the Commission shall deem necessary for the use and information of the public, shall be printed in plain type and kept on file or posted in such places and in such manner as the Commission may order."

Sections 614-18, General Code, provides as follows:

"Nor shall any public utility * * * extend to any person, firm or corporation, any rule, regulation * * * except such as are specified in such schedule."

The object of the law in providing for the filing of schedules by public utilities is not only to inform the public of the rates, rentals, tolls and charges for service, but also to prevent unjust discrimination and to prevent extortionate rates being charged. The object of the law must be kept steadily in mind in arriving at a conclusion in this matter. Discrimination is one of the chief things that the law seeks to prevent, by requiring the filing of schedules. Discriminations can be made against patrons in many ways. The rates charged for service may be the same, but the circumstances under which the rates are given, or the terms of the contract providing for the rate may be so different in different cases, that the rate, while appearing to be the same, being furnished under different circumstances and under different terms and conditions, would not be uniform and a discrimination would exist.

Sections 614-16, General Code, provides that the schedule must contain all rules and regulations in any manner

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affecting rates, rentals, tolls, classification and charges; and Sections 614-18, General Code, above quoted, provides, "nor shall any public utility * * * extend to any person, firm or corporation any rule, regulation * * * except such as are specified in such schedule," showing an intention on the part of the legislature to require utilities to file schedules containing something more than mere rates, tolls and charges for service. These sections provide not only that the schedule contains the rates, tolls, charges and classifications, but also all rules and regulations affecting the same; strictly speaking, all the regulations contained in contracts entered into between a public utility and the patrons for service affect the rate, because the terms of the contract under which the service is furnished at the rate fixed, are inseparably connected with the rate charged for service; that is to say, that the rate for the service is given in the conditions named in the contract, and no other.

I have examined the contracts of several telephone companies in order to show that the terms of the ordinary contract do affect rates. For instance, some of them provide that the subscriber agrees to furnish a portion of the material for the erection of a line in order to receive service at a certain rate and restrictions are made for the use of the telephone and an additional charge for violations of restrictions is provided for. Others provide that the subscriber shall maintain and keep in repair a portion of the line and that the company be relieved from any rebate or liability on account of any interruptions in service when the telephone is out of order. One that I have examined provides that payments shall be made annually, in advance, and no rebate of the first year's payment shall be allowed for any cause.

The Commission can readily see that in most every telephone contract there are rules and regulations embodied that effect the rates, tolls and charges.

I attach copies of several contracts which are used by several telephone companies, to this opinion. There is, as

the Commission can readily see, no uniformity therein. If the companies were required to file as a part of their schedules conditions embodied in their contracts, there would be uniformity in the contracts; there would be less discriminations and the Commission would be better informed as to the conduct of the telephone business and they could more readily perform their duties under Sections 614-18, General Code, which gives the Commission general supervision over all public utilities, power to examine the same and the manner in which their properties are operated and managed and conducted, with respect to the adequacy or accommodation afforded by their service.

I am, therefore, of the opinion that telephone companies should be required to include in their schedules, in addition to the rates, tolls, charges and classifications, all rules, regulations, conditions and requirements affecting the rates or service or in any manner imposing obligations or duties upon subscribers either as conditions precedent to securing service or in their relations to the company while receiving service.

F. M. CURRY, MINERVA, OHIO, *v.* THE EASTERN TELEPHONE COMPANY.

P. S. C. No. 583.

Decided April 28, 1914.

Discrimination — Rate for Switching Service Furnished to Privately Owned Line — Special Contract for Service Condemned — Reimbursement of Subscriber for Expenditures Involved in Securing Service.

Upon complaint as to the refusal of the respondent to furnish switching service to the complainant at the regular schedule rate for such service, it appeared that the respondent's schedule, on file with the Commission, provided for a rate of \$8.00 per year for switching service to persons who would "build, maintain and equip their own lines and telephones" in territory not developed by the respondent, provided that each line should carry a minimum of six subscribers. The schedule also provided that there should be a special contract for the switching service, but why this special contract was demanded and what it should contain was

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not set forth. The respondent did, however, reserve the right to construct its own lines and furnish service at its regular schedule rates at any time in the future.

The complaint in this case arose upon the refusal of the respondent to furnish switching service to the complainant at a rate lower than \$12.00 per year. The Commission found that the complainant resided in territory which was undeveloped by the respondent and was, therefore, entitled to service at the rate of \$8.00 per year, provided he owned the line extending from his residence to the respondent's switchboard. The Commission further found that the complainant was probably the owner of this line and that there were not six subscribers connected with the line.

Held: That the complainant is entitled to switching service at the schedule rate of \$8.00 per year and that the company has the right to connect five other subscribers to the complainant's line;

That the respondent should file with the Commission, as part of its schedule, a statement of the precise position that the complainant will occupy when the respondent shall decide to occupy the territory in which the complainant resides;

That that part of respondent's schedule which calls for a special contract for any class of service is to be condemned unless the form of such special contract is filed with, and made a part of, the schedule; and

That, furthermore, if the respondent reserves the right to discontinue switching service, to refuse such service, or to change the rate therefor, the schedule should contain the terms and conditions upon which the subscriber will be reimbursed for the expenditure of money he was forced to make in order to secure service.

Furnishing of Service at Reduced Rate to Stockholders of Mutual Company Condemned.

It appeared that the respondent had an alleged contract with The Patterson Mutual Telephone Company, whereby the stockholders of the latter company were granted switching service at a rate of \$3.50 per year. It further appeared that some of the stockholders in question were furnished service directly from the switchboard of the respondent, instead of through the switchboard of the Patterson Mutual company.

Held: That the furnishing of service to persons who are in no way connected with the operation of the Patterson Mutual company at rates lower than those granted to other persons in the same territory who are not stockholders of that company is unjustly discriminatory and should be discontinued.

Uniformity in Rates for Toll Service.

It appeared that the respondent had been "careless in the charging for local telephone tolls."

Held: That the respondent should set forth in its schedule, in plain and unequivocal language, its rates for toll on long distance service.

Order.

An order was issued requiring the defendant to furnish service to the complainant at a rate not to exceed \$8.00 per year, to eliminate from its schedule the stipulation requiring a special contract for any class of service, to publish in its schedule the terms and conditions upon which service might be discontinued, or refused and the circumstances under which rates might be changed or modified, to "provide an equitable reimbursement of subscribers for expense incurred and to publish clearly its rates for toll and long distance service.*

OPINION.

The petition of F. M. Curry against The Eastern Ohio Telephone Company contains the allegations following:

1. The Eastern Ohio Telephone Company gives switchboard service to subscribers of The Paterson Mutual Telephone Company for \$3.50 per year.

2. The Eastern Ohio Telephone Company gives like service to some others for \$3.00 per year.

3. The schedule charge for this service is \$8.00 per year.

4. Complainant owns his own telephone and wires to the switchboard of The Eastern Ohio Telephone Company, and a part of the poles carrying these wires.

5. The existence of a contract between complainant and The Eastern Ohio Telephone Company for switchboard service at \$6.00 per year.

6. Because complainant refuses to pay \$12.00 per year for said service, instead of \$8.00 according to the new schedule, he is unable to secure service.

7. The Eastern Ohio Telephone Company charges local tolls at 10 cents, 5 cents and nothing.

It appears, upon examination of the records of this Commission, that, prior to the filing of the rate schedule, on October 28, 1911, this company had nine different rates in force at the Minerva exchange. Upon that date the company filed a schedule, the exceptions in which showed that the company had practically no definite fixed charges for its service, but seemed to quote to each applicant whatever rate the company's officers thought they could get or

* Editor's headnote.

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whatever the applicant would pay, and then curtailed the extent of territory or the number of exchanges that the patron could talk with free, to conform to the rate charged. This loose method of business characterized The Eastern Ohio Telephone Company during the years 1911 and most of 1912. On September 1, 1913, this company filed a new rate schedule, quoting one rate for the entire system, and classifying the service into individual lines and party lines, and also as to business and residence. This same schedule carried the following clause:

"Parties who build, maintain and equip their own lines and telephones, when taken on to our switchboards, are given switching service over the entire system at an annual charge of \$8.00 per telephone."

The filing of this schedule was, in effect, the raising of some rates from \$6.00 to \$8.00, from \$3.00 to \$8.00, and from \$3.50 to \$8.00, and, naturally, produced a general protest from patrons of the company. Under this same switching clause provision, some of the subscribers in the town of Minerva desired to give up their rented telephones and purchase their own and run a line to the central office and thus secure service at a charge of \$8.00. The company undertook to lighten this protest by filing a new rate schedule on February 1, 1913, known as P. S. C. O. No. 3. In this schedule the company quoted the same rate of \$8.00 over the entire system, and also a lower rate for each exchange system, which left it optional with the subscriber which he should take. The company also changed in this schedule the switching charge clause, so that the rate of \$8.00 per year would apply to subscribers, who would build, equip and maintain their own lines in communities not developed by The Eastern Ohio Telephone Company.

On September 1, 1913, The Eastern Ohio Telephone Company filed a new schedule, known as P. S. C. O. No. 4, in which the switching charge over the entire system for parties building, equipping and maintaining their own lines and telephones, in territory not developed by the company, was \$8.00 per telephone, provided that each line

carried a minimum of six subscribers. The company also in its schedule insisted upon a special contract for this service. Just why this special contract was demanded, and what the special contract should include, is not set forth in the schedule. The company did, however, in the schedule reserve the right to construct its own lines and furnish telephone service at its regular schedule rates at any time in the future.

The whole history of the rate making efforts of this company indicates that its managers have very little knowledge of the telephone business, and they seem to have been groping in the dark without any very definite end in view.

The testimony shows that Mr. Curry lives in a district that is at present undeveloped by The Eastern Ohio Telephone Company and is, therefore, entitled to telephone service at \$8.00 per year, provided he owns the line to the switchboard. The testimony as to the ownership of this line was not very definite on either side. Mr. Curry claims ownership of the wires, and of all the poles to the corporation line, and the company's witnesses did not seem to have any definite facts to controvert this, although they believed that they owned the line. Under the circumstances, it would appear that Mr. Curry's claim of ownership would have to be sustained so far as the ruling in this case is concerned.

The fact that Mr. Curry's line does not now have six subscribers on it could hardly be maintained by the company as a reason for not giving him service, because the testimony shows that the company has several lines upon which the full quota of six subscribers are not connected, in some cases such lines having only one subscriber upon them. All of these subscribers, including Mr. Curry, evidently built their own lines and purchased their telephones in good faith, and upon the promise of the telephone company that they were to receive the switching service.

That part of the present schedule of this company which calls for a special contract for any class of service is to be condemned, unless the form of such special contract is filed

with the schedule and made a part of it. In addition, if the telephone company reserves the right to discontinue switching service, refuse such service or change the rate for same, they should state in their schedule upon what terms and conditions the subscriber will be reimbursed for the expenditure of money he was forced to make in order to secure the service.

Taking up the allegations of this complaint in their order, the testimony shows:

1. That The Eastern Ohio Telephone Company has an alleged contract with The Patterson Mutual Telephone Company, by which the stockholders of The Patterson Mutual Telephone Company receive switching service for a charge of \$3.50 per year. The testimony also shows that some of these stockholders do not get their service through The Patterson Mutual Telephone Company but direct from their own homes to the switchboard of The Eastern Ohio Telephone Company. Upon the face of it, it would appear that the giving of such service to people who are in no way connected with the operation of The Patterson Mutual Telephone Company is but a subterfuge, and that such rates are discriminatory in that they are lower than are the rates to other persons in the same neighborhood who are not stockholders in The Patterson Mutual Telephone Company.

2. That The Eastern Ohio Telephone Company did, prior to the filing of the last schedule at any rate, give switching service to some patrons at \$3.00 a year, which was less than the schedule at the time, and is less than the schedule now on file with the Commission.

3. The present schedule calls for a switching charge of \$8.00 per year which, if exacted of all patrons, would not be discriminatory, and, so far as the investigation can show, is a reasonable rate for the service performed.

4. That complainant is entitled to the use of a telephone, over his own wires, at the switching charge rate of \$8.00 per year, and the company has the right under its schedule to attach five other users to the same, upon application for such service.

5. Complainant's claim of a contract with The Eastern Ohio Telephone Company for switching service at \$6.00 per year was not substantiated.

6. Complainant was justified in refusing to pay \$12.00 a year for switching service over his own lines, and the company ought to have accepted \$8.00 per year for the service under the circumstances, and should file with this Commission as a part of its schedule a statement of the exact situation that complainant will occupy when The Eastern Ohio Telephone Company shall decide to occupy the territory in which he is located.

7. The testimony shows that The Eastern Ohio Telephone Company has been, at least, careless in the charging for local telephone tolls. The schedule should define exactly what the charges shall be, and those charges ought to be exacted in all cases and without discrimination.

8. The Commission does not find it necessary in deciding the issues of this case to interpret or construe the contract alleged to have been entered into by The Patterson Mutual Telephone Company and the defendant.

ORDER.

This case came on to be heard upon the pleadings and the evidence, and was argued by counsel, and the Commission, being fully advised in the premises, finds that the defendant, The Eastern Ohio Telephone Company, is obligated under the provisions of its schedule of rates, rules and regulations, duly on file with this Commission, to furnish to the complainant, F. M. Curry, telephone service at the rate of \$8.00 per annum.

The Commission further finds that defendant, The Eastern Ohio Telephone Company, has the right, under its said schedule, to connect other subscribers, to the number of five, to the line now serving said F. M. Curry.

The Commission further finds that defendant, The Eastern Ohio Telephone Company, is not entitled to refuse service to complainant, said F. M. Curry, or to charge a rate higher than \$8.00 per annum, for lack of applications from

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other subscribers, or prospective subscribers, for service over or upon said line.

The Commission further finds that when defendant, The Eastern Ohio Telephone Company, reserves the right to refuse, or discontinue, or change the rates for switching service that the subscribers should be reimbursed for money expended in building lines or furnishing material to secure such service, and that said company should fully set out the circumstances under which the right to change the rates for such service will be exercised.

The Commission further finds that the demanding of a special contract for any class of service different from, or in addition to, the rules and regulations regularly carried in the schedule is an unreasonable and illegal requirement and cannot be sustained.

It is, therefore, ordered, That defendant, The Eastern Ohio Telephone Company, be, and it is hereby, notified, directed and required to proceed forthwith to furnish and supply telephone service to said complainant, F. M. Curry, at a yearly rate not to exceed \$8.00.

It is further ordered, That defendant, The Eastern Ohio Telephone Company, be, and it is hereby, notified, directed and required to forthwith eliminate from its said schedule the stipulation that a special contract shall be entered into for any class of service.

It is further ordered, That if, and when the defendant, said The Eastern Ohio Telephone Company, reserves the right to discontinue, or refuse switching service, or to change or modify the rate for such service to subscribers who have incurred expense in building lines or purchasing material in order to secure such service, defendant, said The Eastern Ohio Telephone Company, shall show and publish in its schedule the terms and conditions upon which such service may be discontinued, or refused to such subscriber, the circumstances under which such rate may be changed or modified, and shall provide an equitable reimbursement of subscribers for expense incurred.

It is further ordered, That defendant, said The Eastern Ohio Telephone Company, be, and it is hereby, notified and directed to forthwith show in its schedule, in plain and unequivocal language, its rate for toll and long distance service.

Dated at Columbus, Ohio, this twenty-eighth day of April, 1914.

THE CAREY FARMERS' TELEPHONE COMPANY *v.* CENTRAL
UNION TELEPHONE COMPANY.

No. 17.

Decided May 19, 1914.

**Compulsory Physical Connection Denied on Ground that One Company Has
Lines Connecting Localities in Question — Jurisdiction of Commission.**

OPINION AND ORDER.

This matter came on for hearing on the petition of The Carey Farmers' Telephone Company for an order requiring the Central Union Telephone Company to form connection and interchange service with said The Carey Farmers' Telephone Company, the answer thereto and the evidence, and was argued by counsel; and the Commission, being fully advised in the premises and it appearing that the points and localities for which connection and interchange of service is sought in this proceeding are not such points and localities as cannot be communicated with, or reached by, the lines of either of said companies alone, and it appearing further that this Commission has no authority* to require companies to connect their lines and interchange service between points which can be communicated with, or reached by, the lines of one of said companies alone,

It is, therefore, ordered, That this case be, and the same is hereby, dismissed.

Dated at Columbus, Ohio, this nineteenth day of May, 1914.

* See Commission Leaflet No. 9, at page 51.— Ed.

OREGON.

Railroad Commission.

IN THE MATTER OF THE STANDARDS OF MAINTENANCE OF UNDERGROUND CONDUITS, MANHOLES, ETC. (INFORMAL INVESTIGATION ON COMMISSION'S OWN MOTION).

No. U-185.

Dated April 23, 1914.

Recommended Practice for Construction and Maintenance of Underground Systems.

1. PRINTED RULES; COMPILATION AND DISTRIBUTION.

Printed rules shall be prepared by each utility and a sufficient number of copies issued that each employee who may at any time be called upon, in any manner, to do underground work or supervise same, shall be provided with a copy of said rules.

A record shall be maintained in the territorial district, division or general office of each utility, as the case may be, of the signatures of all employees so provided with copies of these printed rules, such employee's signature being an acknowledgment of service of said rules by the utility for whom he may be employed.

2. PROTECTION AGAINST ACCIDENT.

At all times during the progress of work in manholes, when workmen are in the manholes, or during the period when covers are removed therefrom, a competent workman shall be stationed as a guard or watchman, on the ground above, at or near the entrance to said manhole, and such workman shall at all times be in a position to supervise the immediate vicinity of said manhole and shall be so located as to have the manhole barricade and the immediate surroundings within his clear vision.

A barricade shall be maintained around the opening to the manhole and be of such type as to furnish ample protection against accidents at all times during the progress of work therein. There shall be displayed from the top of such barricade, at a distance of not less than five (5) feet from the ground, a red flag of dimensions not less than 10 x 15 inches; and said flag shall be in such a position as to be in full line of vision from all directions. In addition thereto, from dusk until daylight the following morning, red lights shall be maintained in such positions as to warn the public approaching in any direction.

The regular manhole cover shall be replaced on same during all periods that workmen are not on duty.

3. FIRE AND GAS.

It shall be the first duty of all workmen opening and entering manholes to first carefully inspect for gases, and under no circumstances shall a light of any description whatsoever be allowed to enter the manhole until it has been positively ascertained that gases do not exist therein.

In such cases as it is found necessary to use a blow-torch in wiping joints, inspection for gas shall be made immediately prior to the introduction of the lighted torch in the manhole. During such period as the workman shall be using a lighted torch or fire of any description therein, the guard above ground shall be at the upper entrance to the manhole.

Smoking in manholes or at the opening thereof shall be positively prohibited at all times.

Under no circumstances shall a fire be maintained for the purpose of furnishing warmth for the workmen in the manhole, or within a distance of ten (10) feet from the opening to manhole.

In all cases where it is possible, electric light shall be furnished. Where impossible to furnish electric lights, acetylene gas burners shall be maintained; the tank furnishing the gas shall at all times be located above the ground and the gas burners supplied by means of rubber

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tubing. Lanterns and candles should be used in manholes only in cases of absolute emergency, when making the initial inspection in cases of trouble, and when it is impossible or impracticable to secure such electric or gas lights as above prescribed.

4. HEATING OF WAX OR METAL.

At no time shall wax, compound, paraffine, metal, or any other substance be heated within ten (10) feet of the manhole opening. The furnaces or fire-pot for heating same shall also be maintained at a distance not less than ten (10) feet from the opening of said manhole.

Covered vessels containing heated paraffine, wax or compound shall never be lowered into a manhole. The cover shall be removed from the vessel not less than ten (10) feet from the manhole opening.

5. PROTECTION TO SERVICE.

Splices in a temporary condition shall be allowed to remain in such manner only the least possible time, and shall be provided with such insulation as is common practice, and in so far as possible provide protection against moisture entering same.

In all cases the cable or cables should be returned to normal condition at the earliest possible moment, and if service be affected the work should be continuous to the end of restoring service to all patrons.

6. CLEANING MANHOLES.

All debris, such as paper, insulated ends of wire, rubber insulating matter, or any other substances of an inflammable nature, shall be removed at least once a day during the progress of the work.

The manhole shall be thoroughly cleaned of all debris upon the completion of each piece of work. A regular inspection of all manholes and cleaning of same shall be made in the spring and fall of each year.

7. EXTENT OF APPLICATION OF PRECEDING RULES.

Such rules or practices as may be in effect or employed by the utility, not in opposition to the above, shall in no wise be affected or altered by these rules.

Observance of the foregoing standards is recommended by the Commission to all utilities, from the dual considerations of safety and efficiency of service. It is not deemed necessary, at the present time, to institute formal proceedings looking toward the issuance of any formal order in the premises, but such course will be followed in event standards of construction and maintenance are not voluntarily made such as to secure the utmost efficiency and safety in service.

Utilities receiving this code of recommended practice are requested to notify the Commission as to the adoption of the practices suggested.

Salem, Oregon, April 23, 1914.

PENNSYLVANIA.

The Public Service Commission.

JAMES B. BONNER *v.* THE BELL TELEPHONE COMPANY OF PENNSYLVANIA.

No. 94.

Decided May 6, 1914.

Refusal of Service to Subscriber Desiring Direct Connection with Foreign Central Office — Approval of Zone System.

This was a complaint as to the refusal of the respondent to install in the complainant's residence at Melrose a telephone connected with the respondent's Oak Lane exchange, except upon the condition that the complainant would agree to the installation, in his residence, of an additional telephone, connected with the respondent's Melrose exchange. It appeared that, while Oak Lane and Melrose were constituent parts of the same suburban community, the former was located in the city of Philadelphia, and the latter in Montgomery County. It further appeared that Oak Lane and Melrose each constituted a separate local exchange area, but the central offices of the two exchanges were located in the same building at Melrose. Subscribers connected with the Oak Lane exchange were granted free service to other exchanges in Philadelphia, while those connected with the Melrose exchange were required to pay a toll charge of 5 cents for each message to Philadelphia.

Held: That the complainant is entitled to adequate service at reasonable rates and if he is enabled to secure such service, he has no right to demand that his telephone be directly connected with any particular exchange, notwithstanding the fact that the central office of the exchange with which he desires a direct connection is located in the same building as the central office of the exchange serving the area in which the complainant resides;

That it has been proven by experience that "the most effective way of conducting the telephone business is to divide the territory into local exchanges or zones, in which the interests of the people are inter-related";

That if the boundaries of the exchange areas or zones are so arranged as to include or exclude territory in such a way as to affect disadvantageously and unreasonably the service furnished the public, the Commission has authority to correct the resulting situation, but there is no evidence that such a situation exists in this case.

Complaint dismissed.*

* Editor's headnote.

FINDING, DETERMINATION AND OPINION.

PENNYPACKER, *Commissioner*:

The complaint presented no evidence at the hearing of the above case, March 26, 1914. From the petition and answer on file, and the testimony given on behalf of the respondent, the following facts are found:

Oak Lane and Melrose constitute a suburban community whose residents in the main have relations with Philadelphia. Melrose is in Montgomery County and Oak Lane is in the city of Philadelphia. Each of them, under the arrangements made by the respondent corporation, constitutes a separate local telephone exchange; a switchboard for each of these exchanges is established and maintained in the same building in Melrose. The general rule of telephone service is that each subscriber is connected with the local exchange in the territory in which he resides, and for communication with persons living in other exchanges, a toll is charged.

For a number of years, at least five, the respondent made an exception to this rule in the case of residents of Melrose, and permitted them to be connected directly with the Oak Lane exchange upon the payment of \$60.00 and mileage depending upon the number of miles between their residences and the center in Philadelphia. The respondent has found this exceptional service to result in trouble and inconvenience, and to be an interference with the regular and approved method of conducting the business, and has recently sought to limit the exception, looking forward to its entire cessation.

The complainant, who lives in Melrose, about four squares from the line between Montgomery County and Philadelphia, and who has made his residence there at a comparatively recent date, asked to have connections direct with the Oak Lane switchboard upon the mileage basis, which would enable him to connect directly with Philadelphia, where are the most of his correspondents. The respondent required him to connect with the Melrose exchange

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paying \$36.00, and to pay a toll of 5 cents upon each Philadelphia message. Upon his insistence, however, the respondent offered to connect him directly with the Oak Lane exchange, provided he should first be connected with the Melrose exchange. This suggestion, if carried into effect, would necessitate the placing of two telephone instruments in his house.

The substance of the complaint is that

"the Bell Telephone Company has refused to install in the residence occupied by your petitioner at Melrose, a telephone to be connected with the said exchange building situate in Melrose, with an Oak Lane number, for the sum or price of \$60.00 per year, for unlimited service in any part of Philadelphia, unless your petitioner agrees to install an additional instrument in his residence, connected with a separate set of wires to the same telephone exchange building, but to be given a Melrose number, at a cost of \$36.00 per year."

The controversy between the parties in the present case seems to have arisen over immaterial issues. It is the duty of the respondent to furnish adequate telephone service at reasonable rates, and the complainant is entitled to demand such service, and to be brought into communication with his correspondents in Philadelphia and elsewhere. Provided he is enabled to secure such service, he has no right to demand that he be connected with any particular switchboard. Nor is it at all material that two switchboards are maintained in close proximity in the same house. Obviously, it is more convenient, as a general proposition, that the local switchboard should be somewhere in the territory of the local exchange, and this is a convenience which alone concerns the respondent.

If the complainant, by connection with the Melrose exchange and the payment of \$36.00, is enabled to communicate with his Melrose neighbors, and by the payment of five-cent tolls, to communicate with his Philadelphia and other correspondents, and these charges are reasonable, he receives all which he can properly claim.

That the most effective way of conducting the telephone business is to divide the territory into local exchanges or

zones, in which the interests of the people are inter-related, has been proven, by experience, and the system has met the approval of competent authority. Ordinarily the lines dividing these exchanges or zones are determined by the telephone companies, and are the outcome of experience. Necessarily, if such a system be adopted, there will often be neighbors living near each other on opposite sides of the line, whose relations to the telephone service differ. If the lines of the exchanges or zones are so arranged as to include or exclude territory in such a way as to affect disadvantageously and unreasonably the service to the public, such a determination of them can be supervised and corrected by this Commission, but there is no allegation to that effect in the petition, and no evidence to support the conclusion. Nor is there any allegation in the petition, or any proof offered that a charge of \$36.00 for connection with the Melrose exchange, or of a five-cent toll for each message to Philadelphia is exorbitant or unreasonable. These difficulties, if they exist, can be considered by the Commission should they be properly presented. The complaint ought, therefore, to be dismissed.

ORDER.

And now, to wit, May 13, 1914, the finding, determination and opinion of Commissioner Pennypacker is concurred in and made the finding, determination and opinion of the Commission, and

It is accordingly ordered, That the complaint in this case be, and the same hereby is, dismissed.

SOUTH CAROLINA.

The Railroad Commission.

IN THE MATTER OF AGREEMENT DATED MARCH 31, 1914, BETWEEN THE SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY AND THE CITY OF ORANGEBURG, SOUTH CAROLINA, WITH REFERENCE TO INCREASING ORANGEBURG LOCAL EXCHANGE TELEPHONE RATES.

Decided May 13, 1914.

Agreement between Company and City as to Rates—Increase in Rates upon Installation of Common Battery System and New Instruments of Subscribers—Discount for Prompt Payment.

This was an application for the approval of an agreement entered into between the city of Orangeburg and the Southern Bell Telephone and Telegraph Company, providing that upon the installation by the company of a multiple, common battery, central energy system, new instruments at each subscriber's station and the construction of an underground conduit system in the central business district of the city, in place of the existing system, and thereafter, until 2,250 stations should have been connected with the local exchange; the company should be entitled to charge certain rates* fixed by the agreement, and that, after 2,250 stations should have been connected, the rates charged should not exceed those charged by the company for the same class of service under similar conditions in other localities of similar size in the State of South Carolina. It was further provided in the agreement that, until 750 stations should have been connected with the local exchange, a discount of 50 cents per month should be allowed on bills paid in advance, and that after the connection of 750 stations no discount should be allowed, but bills should continue to be paid in advance.

* The rates specified follow:

Unlimited special line business station, per month.....	\$4.00
Unlimited duplex line business station, per month.....	3.50
Unlimited special line residence station, per month.....	2.50
Unlimited duplex line residence station, per month.....	2.00

The Commission made an order confirming the agreement without prejudice to its further action should dissatisfaction arise at any time in the future.*

ORDER.

After considering the agreement between the Southern Bell Telephone and Telegraph Company, dated March 31, 1914, and the city of Orangeburg, South Carolina, with reference to the installing by that company of a multiple, common battery, central energy telephone system, and the construction of an underground conduit system and the placing therein of telephone cables within the central business district of Orangeburg, South Carolina, in lieu of the present system now being operated there, and the payment of the Orangeburg telephone subscribers of the local exchange telephone rates at that point, upon the terms and conditions set forth in said agreement, a copy of which agreement is on file in the office of the Commission, and after considering the resolution of the mayor and council of Orangeburg, dated March 31, 1914, requesting this Commission to approve the said agreement and to authorize said telephone company to charge the schedule of rates therein mentioned, upon the terms and conditions therein set forth, a copy of which resolution is on file in this office, and upon considering the original agreement with said company by a large majority of the telephone subscribers of said company in Orangeburg, South Carolina, agreeing to the schedule of rates and terms and conditions set forth in said agreement, between said company and said city of Orangeburg, said original agreement by said subscribers being on file in this office,

It is considered, ordered and adjudged by the Railroad Commission of South Carolina, That the above agreement

*Editor's note prepared from record.

is confirmed, ratified and approved and the Southern Bell Telephone and Telegraph Company is hereby authorized, from and after the expiration of thirty days after the completion of the improvements provided for in said agreement, to charge the schedule of rates for local exchange service in Orangeburg, South Carolina, as and upon the terms and conditions therein set forth, reference being hereby made to said agreement showing said schedule of rates and terms and conditions upon which they are to be charged.

This agreement is confirmed by The Railroad Commission without prejudice.

May 13, 1914.

SOUTH DAKOTA.

Board of Railroad Commissioners.

IN THE MATTER OF CHARGES BY TELEPHONE COMPANIES FOR ADDITIONAL DIRECTORY LISTINGS.

Complaint No. 1759.

Dated April 4, 1914.

Charge for Additional Directory Listings Disapproved.

Held: By the Counsel for the Board, that each member of a business firm having a telephone in its office must be considered as a subscriber, and the telephone company's directory of its subscribers, in order to accomplish the purpose for which it was originally intended (i. e., "to furnish, in a concise and abbreviated form, the names of the persons who are subscribers of the telephone company in order that persons desiring to converse with them over the telephone may find their names and telephone numbers conveniently"), should contain the telephone number of the firm listed under not only the name of the firm, but also under the names of the individual members of the firm, and that there should be no charge for the necessary additional listings.*

OPINION OF COUNSEL FOR THE BOARD.†

I have before me the letter of Mr. W. E. Tipton of the firm of Zollman and Tipton, of Mitchell, concerning a charge, proposed to be made to Mr. Tipton for indexing his name in the telephone directory, of 50 cents per month or \$6.00 per annum.

It has always been my theory that a telephone directory was published by the telephone company for the convenience of its patrons and the public at large, as well as for the purpose of saving extra work and annoyance to the

* Editor's headnote.

† In its Pamphlet No. 1, issued August 1, 1912, the Board states that the opinions of its Counsel will govern in the various subjects to which they relate unless reconsidered by the Board or reversed by court procedure.—Ed.

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operators in the local exchange by requiring persons making use of the telephone to call the required number, instead of simply calling for the telephone and naming the party with whom it was desired to converse. In fact, most telephone directories have printed in the forepart certain rules to cover the use of the telephone and directory, and invariably there is a rule providing that "patrons must call by number."

From the correspondence before me, it appears that Mr. Tipton has a telephone at his residence and that there is a telephone in the office of the firm of Zollman and Tipton, of which Mr. W. E. Tipton is a member, and that the firm telephone is indexed in the telephone directory under the letter "Z". Mr. Tipton desires that the directory shall be cross-indexed so as to have the firm telephone appear under the name of Tipton as a member of the firm of Zollman and Tipton, which would cause one additional name to be inserted in the telephone directory.

While it is true that telephone directories may be used for advertising purposes, and experience shows that they are so used, it is a fact that the primary purpose to be served by a telephone directory is to furnish, in concise and abbreviated form, the names of the persons who are subscribers of the telephone company in order that persons desiring to converse with them over the telephone may find their names and telephone numbers conveniently, and, in so far as this object is concerned, the directory is not, in my opinion, an advertising medium.

I have made an investigation for the purpose of ascertaining the practice adopted by telephone companies and Commissions regulating the telephone business and find that this matter was presented to the Wisconsin Commission on August 6, 1908, in Complaint No. 275, appearing at Page 551 of Volume I of Commission Telephone Cases (Wisconsin 1907-1910); but no action was taken by that Commission other than to call upon the telephone companies for an explanation and to submit the explanation of the telephone companies to the person making the complaint.

I find also that the Railroad Commission of Louisiana in the case of *Cumberland Telephone and Telegraph Company*, Ex parte (12 Louisiana Railroad Commission Reports 122, Volume II, Commission Telephone Cases, Pages 240-247) by an order made on July 28, 1910, adopted a schedule of telephone rates for the city of Baton Rouge in which appears the following item:

Extra name in directory, same subscriber, per issue, (net) no cash discount, 50 cents.

I find also that the Board of Public Utilities of the city of Los Angeles, California, in its report, appearing Pages 993-999, recommended to the city council of that city the adoption of a schedule of rates in which appears, among others, on Page 998 of Volume II of Commission Telephone Cases, the following:

For extra names in directory, 50 cents per month.

It also appears that in Massachusetts the New England Telephone and Telegraph Company maintains a number of miscellaneous rates and makes a rate for additional listing in the directory.

In none of the above instances does there appear any particular reason why this charge should be made and, in fact, no reason whatever is given. Inasmuch as the firm of Zollman and Tipton has a telephone instrument in its office, each member of the firm must be considered as a subscriber of the telephone company, and, in my opinion, the telephone directory, in order to properly accomplish the purpose for which it was originally intended, should contain the name, not only of Zollman and Tipton and the telephone number of the firm, but should also under the letter "Z" indicate the name of Mr. Zollman and give his residence and office numbers, and under the letter "T" should also give the name of Mr. Tipton and his residence and office telephone numbers; this as a matter of convenience to the subscribers and the public generally. I do not know of any good reason or, in fact, any reason at all, why a telephone company

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should insist upon making an extra charge for printing a directory in this way, and I am candid to say that I am of the opinion that a telephone directory is not complete until it is indexed as I have indicated above.

IN THE MATTER OF THE INVESTIGATION OF THE RATES, CHARGES AND PRACTICES OF THE MONTROSE TELEPHONE COMPANY, CANISTOTA TELEPHONE COMPANY, SALEM TELEPHONE COMPANY, HARTFORD TELEPHONE COMPANY, HARTMAN TELEPHONE COMPANY, HUMBOLDT-HARTMAN-WELLINGTON TELEPHONE COMPANY AND THE FARMERS' RURAL TELEPHONE COMPANIES, NOS. 1 AND 2.

Complaint No. 1663.

Decided April 27, 1914.

Irregular Practices of Telephone Companies.

Upon investigation on the Commission's own initiative into the practices of the telephone companies doing business in the vicinity of Montrose.

Discrimination between Stockholders and Non-stockholders.

Held: That the practice of favoring stockholders by charging them lower rates than non-stockholders is unjust, discriminatory and contrary to the statute regulating telephone companies.

Switching Fees.

Held: That telephone companies must comply with Section 8 of the statute, which provides that the maximum charge for switching rural lines shall be twenty-five cents per month per telephone, and must discontinue the practice of charging 5 cents per message for such service and the practice of charging a flat rate for service to rural companies regardless of the number of telephones connected;

That where there is a connection of one rural party line with two exchanges, the charge for switching should not be twice as great as for switching service at one exchange, but should rather be constructed on a graduated scale.

Filing of Contracts, Etc.

Held: That all switching arrangements, contracts or agreements with other telephone companies must be in writing, and certified copies must be filed in the office of the Board of Railroad Commissioners.

Unit of Telephonic Service — Exchange Business and Toll Business.

Held: That inter-communication between subscribers within the unit of telephonic service constituted by the local exchange and the rural lines connected therewith on a switching basis, is properly considered as exchange business, and the rental or switching fee charged should include free service throughout the unit;

That communication between two units or exchanges is properly considered as toll service and should be handled over lines with which no other instruments are connected.

Conditions Precedent to Service.

Held: That the ownership of stock may not be made a condition precedent to the right to receive telephonic service, but that a telephone company may require payment of its rates in advance, compliance with reasonable rules, proper treatment of its equipment, and the use of proper language over its lines, and may discontinue service for breaches of these obligations.

Overloading of Lines.

Held: That the connection of two already heavily loaded lines, either directly or by a switch, or the relaying of messages through a subscriber at the end of one line having a telephone instrument installed by another line in the same residence or place of business, tends to cause inefficient service, and that this practice should be discontinued.

Extent of Service in Field Occupied by Company.

Held: That every telephone company must furnish telephone service to all applicants within a field or particular community tentatively covered or intended to be supplied by the company in question.

Extension Sets and Bells.

Held: That the telephone company has the right to furnish extension ringing and talking sets for the accommodation of its patrons and is entitled to make a reasonable monthly rental charge for this additional service.*

REPORT.

MURPHY, *Commissioner:*

The investigation in this proceeding was made by this Board on its own initiative, following the receipt of a number of informal complaints to the effect that the telephone companies doing business in the vicinity of Montrose, as well as the connecting telephone lines, were discriminating against persons who were not stockholders by charging

* Editor's headnote.

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them a rental rate, and furnishing service to stockholders either free or on the assessment basis, and that improper charges existed with reference to the switching charges exacted from rural telephone lines, all of which indicated that there was much confusion and uncertainty and irregularity in the telephone operating conditions in that locality.

From the evidence it appears that the Montrose Telephone Company, the Canistota Telephone Company, the Salem Telephone Company, the Hartford Telephone Company, and the Humboldt-Hartman-Wellington Telephone Company each own and operate an exchange at the cities or towns indicated by the names of the representative companies, except that the last named company has its exchange located at Humboldt only, and all of them perform, at the local exchanges, a switching service for rural farm lines.

The Hartman Telephone Company owns and operates a number of rural farm lines covering a considerable territory east and north of Montrose, and has a farm switch at Hartman. The farmers' rural telephone companies Nos. 1 and 2 own and operate rural lines between Canistota and Salem, having direct connection with both exchanges.

It appears, from the record and reports filed by these different telephone companies in the office of this Board, that the practice has obtained in the past of constructing their lines, and allowing connections to be made, in such a way as to indefinitely extend the rural party line service. In other words, where two already heavily loaded lines could be connected either direct or by a switch, it has been the practice to do this. In other instances, telephone service was extended by the subscriber at the end of one line having a telephone instrument installed by another line in the same residence or place of business and in this manner relay messages from the subscribers on one to those on another line and its connections. Such practices result in poor service and render efficient service an impossibility.

It might be well at this time to direct the attention of these companies to the fact that many of them have switch-

ing arrangements, contracts or agreements with other telephone companies and none of those are on file in the office of this Board as required by law.

For instance, the Humboldt-Hartman-Wellington Telephone Company has a switching arrangement at a place designated as "Jones's Farm" through which messages are transmitted to and from subscribers of the Steninger Telephone Company of Parker. The Hartman Telephone Company has some arrangement for telephone connections with the exchanges at Colton, Humboldt, Clarno, Montrose, Baltic, De'l Rapids, Madison and other stations, and none of these contracts, arrangements or agreements are on file in the office of this Board.

Sections 4 and 6 of the telephone law require every telephone company doing business in this State, before it commences to charge, collect, or receive any rate for the transmission of any message, or for any service in connection therewith, or for the rent of any line or instrument or facility of any kind, to file true and correct schedules or tariffs showing every rate or charge exacted by it and also to file a certified copy of every franchise and license, and of every contract or agreement entered into with any municipality or any telephone company in any manner affecting the transaction of its business. These sections must necessarily be construed to mean that all tariffs and agreements and arrangements of every nature must be in writing, and a certified copy filed in the office of the Board of Railroad Commissioners.

The practice of the indiscriminate construction of telephone lines which results in excessive loading or in overloading of the lines can but result in inefficient telephone service. It is an impossibility to furnish adequate or even any telephone service which will be satisfactory, with a telephone line that is overloaded.

It should constantly be the aim of the owner of a telephone line to so construct it as to furnish to the persons located in the field attempted to be covered by his line, the most efficient telephone service of which the line is capable,

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and persons renting telephone instruments or becoming subscribers to a telephone company should insist at all times, upon thoroughly efficient service. With this co-operation on the part of the person furnishing the service and the consumer, there will soon follow the elimination of heavily overloaded telephone lines, and consequently better telephone service will prevail. Since the hearing an application has been received from the manager of the Hartman Telephone Company for permission to disconnect the lines of this company from the exchange at Montrose, and to substitute for the service now in effect, a message or toll service over a blank or toll line at a message rate. This application was denied pending a final determination of the matters involved in this proceeding. The reason for this application on behalf of the Hartman Telephone Company is obvious. The suggested change would place an unnecessary burden upon the subscribers of both companies, in that all connections between these exchanges would be on a message basis, whereas the Hartman Telephone Company is now connected with the Montrose Telephone Company on a switching basis.

Under the provisions of Section 8 of the telephone law, this company is now receiving from its subscribers the compensation for this switching service at the Montrose exchange in the rental rates which it charges to its subscribers for the rental of telephone instruments.

In this connection it might be well also to direct the attention of these companies to the fact that it appears from the record that in some instances where a rural line is connected with a local exchange on a switching basis, agreeable to the provisions of Section 8 of the telephone law, a charge has been made to the subscribers of the local exchange for the transmission of a message to a subscriber of the rural lines connected with that local exchange on a switching basis, and that the owners of these rural lines desire this arrangement continued. In other words, for the mere payment of 25 cents per month for each instrument, their subscribers are afforded the use of the entire

exchange and are given service not only with all subscribers of such exchange, but also with all subscribers of other rural party lines which are connected with the exchange on a switching basis.

The owners of the local exchange proceed upon the theory that there should be an intercommunication between all of the persons connected with the local exchange, whether as subscribers to it or as subscribers to a rural line connected on a switching basis.

In a general order* made by this Board on the twenty-first day of August, 1913, after a careful and exhaustive investigation of the telephone practices in this State, the following rule was laid down:

"As heretofore stated in the course of this decision, this Commission is of the opinion that each telephone exchange and all lines operated by it in connection therewith, as well as all lines connected with it on a switching basis, constitute a unit for telephone service. All telephone subscribers connected with this local exchange are, under the arrangements provided for by our statute, permitted to freely interchange communication through the medium of a local exchange. In other words, all subscribers are permitted to converse with all other subscribers to a local exchange upon the payment of their telephone rent, and, in case of the connecting companies, of the switching fees provided by law. Rural telephone companies not operated by the local exchange, are, under our statute, upon being connected with the local exchange, and payment of the switching fee, made a part of such exchange, so that the patrons of such connecting rural lines are permitted to talk without any additional charge to all other patrons connected with the local exchange, and all other patrons who are subscribers of or connected with the local exchange are permitted to talk to the subscribers of such connecting rural line without the exaction of any additional charge. In other words, a local exchange and all of its connecting lines, whether owned and operated by it, or connected with it on a switching basis, constitute a telephone unit and are permitted to talk with each other without any extra charge."

This rule results in the most satisfactory telephone service, and constitutes proper telephone practices and the companies involved in this proceeding, as well as all other telephone companies doing business in this State, must conform thereto.

* Printed in Commission Leaflet No. 22, at page 974.— Ed.

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Under our telephone statute (Section 8) the maximum charge for switching may not exceed 25 cents per month for each instrument on any rural party line. In other words, where a rural party line is connected with a local exchange, the maximum charge for switching may not exceed 25 cents per month. Where, however, there is a connection of one rural party line with two exchanges, the charge for switching should not be twice as great as for switching service at one exchange, but should rather be constructed on a graduated scale. For instance, if a rural party line has connections with two exchanges and receives a switching service at these exchanges, a proper charge might be on the basis of the payment of $37\frac{1}{2}$ cents per 'phone by such rural party telephone line, this amount to be proportioned to the exchanges with which the connection and switching service is had on the basis of $18\frac{3}{4}$ cents each. For instance, it appears from the record that the rural telephone companies numbered 1 and 2 have telephone lines operating between Salem and Canistota and these are connected and the subscribers receive switching service at both exchanges. The $37\frac{1}{2}$ cent scale might be applied to this situation. It also appears from the record that between the exchanges at Montrose and Canistota, there is what is known as a joint line, and on this joint line which was constructed for a certain distance by the respective companies, each company has subscribers. It goes without saying that the subscribers of the companies on this joint line between the point of connection and the local exchange are afforded telephone service free, but in conversing with subscribers of the other company or with the exchange of the opposite company over this joint line, a charge is supposed to have been made. As a matter of fact, this line was never policed by either company and the result was, a considerable amount of free telephone service by the subscribers on this joint line at the two exchanges and a consequent discrimination in favor of those subscribers as against other subscribers on other rural lines.

A proper rate to be paid by each of these companies to

the other for the switching service afforded to the subscribers on this joint rural line would be on the basis of 12½ cents per month for each telephone instrument and it would be a proper practice for each company so incurring this expense to add it to the rental charge of the subscribers on this joint line, and this would increase the rental rate to such subscribers by 12½ cents per month or \$1.50 per annum.

It appears from the record that the Hartman Telephone Company is connected with the exchange of the Montrose Telephone Company by a direct line extending from Hartman into the Montrose exchange, and that this wire is used as a rural party line, having direct connection with the stations of numerous subscribers between Hartman and the Montrose exchange.

As to each telephone instrument or each subscriber located on this line between Hartman and the Montrose exchange, the Hartman Telephone Company should pay unto the Montrose Telephone Company a switching fee not to exceed 25 cents per month. In addition to this direct line the Hartman Telephone Company owns other rural lines radiating from its switch at Hartman, which do not have direct connection with any exchange, and only have connection with the Montrose exchange through the Hartman switch, and as to each telephone instrument on these lines, there should be paid by the Hartman Telephone Company to the Montrose Telephone Company a switching fee of not to exceed 12½ cents per month per telephone.

From the record it likewise appears that other telephone companies, and particularly the Colton Telephone Company, have, in the past, been afforded the facilities of the Montrose exchange through the switch at Hartman without any compensation either to the Hartman Telephone Company or the Montrose Telephone Company. In other words, the switch at Hartman afforded a gateway through which connecting telephone lines beyond Hartman might receive the benefits of the connection with the Montrose exchange without in any manner contributing to its revenues.

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If the majority of the subscribers of any line which is owned and operated by the Hartman Telephone Company desire switching service at, and said line has direct connections with more than one exchange, a proper basis to be adopted is establishing the rate for such switching service at these two exchanges, would be on a graduated scale on the basis of $37\frac{1}{2}$ cents for the entire service, or $18\frac{3}{4}$ cents to each exchange.

Experience in telephone practice establishes the fact that if a rural subscriber having direct connection with but one exchange, the calls from his station to that exchange will be many times more frequent than is the case where there is direct connection with two exchanges, and in telephone practice it is found expedient and proper to graduate the rate where the subscriber has connection with more than one exchange, and it is not thought by those who are experienced in the telephone business, that the charge for switching service at two exchanges should be twice as great as at one exchange, but that for each additional exchange with which a subscriber has switching service, there should be an added charge on a fair graduated scale.

If any telephone line operating through the Hartman switch desires switching connection with two exchanges, the switching charge in that case would be on a graduated basis of, say, $12\frac{1}{2}$ cents to each exchange, and $12\frac{1}{2}$ cents to the Hartman switch.

In this connection it may be well to point out for the benefit not only of the local exchanges, but all rural telephone companies as well, that any company which owns and operates a rural party line should, for its regular monthly or annual rental charge, for the use of its telephone instruments and service in connection therewith, afford to each of its subscribers switching service at one exchange, and from what has been said here, it necessarily follows that when switching service is afforded at two or more exchanges the rental rate should be increased to those subscribers receiving this additional service so as to include this additional outlay incurred by the rural telephone line.

The telephone companies represented at the hearing in this proceeding, in common with other telephone companies doing business in this State, have overlooked, if not actually ignored, the frequent decisions made by this Board, and referred to particularly in paragraph numbered One, of the opinion* issued August 21, 1913. This opinion was rendered after a careful and exhaustive investigation into telephone practices in this State, and in discussing this practice in the opinion, this Commission said:

"Notwithstanding the fact that this Commission has repeatedly held that telephone companies must make the same rates to all subscribers for the same class of service, and that they are forbidden by law to make different rates for stockholders than for persons who are not stockholders, it conclusively appeared at this hearing that many of the telephone companies doing business in this State have been and still are indulging in this violation of the law. On Pages 6, 33, 50, and 65 of the book of opinions from the office of the Attorney-General of this State, issued by this Commission on August 1, 1912, as well as on Pages 824, 825, and 830 of the annual report of the Attorney-General for the years 1911 and 1912, appear the opinions upon this subject, which have been quite generally furnished to the telephone companies.

"Every telephone company doing business in this State must know by this time that the practice of favoring their stockholders by lower rates than are charged to those who are not stockholders is unlawful and unjust discrimination under the act, clearly violative of the provisions of Section 10 and Chapter 289 of the Laws of 1909, as amended by Chapter 218 of the Laws of 1911, and that any person or telephone company, and any officer or agent of any telephone company violating the provisions of that section, is subject, upon conviction, to a fine not to exceed \$200."

Since the promulgation of the foregoing opinion, a copy of which was sent to every telephone company in this State, many additional opinions have been rendered by the legal department of this State and they are found in pamphlet Number 2, issued February 1, 1914, at Pages 37, 42, 47, 52, 56, 57, 84, 85, and 96.

This practice of charging different rates to stockholders than are charged to persons who are not stockholders appears to be still indulged in to such an extent that it is a

* Printed in Commission Leaflet No. 22, at page 974.— Ed.

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serious question if it would not be a wise policy on the part of the Commission to institute a criminal prosecution in order to fully acquaint all telephone companies doing business in this State as to the rule of law and the penalty for its violation. Opinion after opinion has been delivered, and every telephone company doing business in this State has received copies of these opinions, and inasmuch as this practice still appears to exist at this time, when this statute has been on the books of this State ever since the legislative session of 1907, it does certainly appear to serve no useful purpose to further continue the policy of repeatedly requesting telephone companies to desist from this practice. One good, vigorous, prosecution with a suitable penalty attached as the outcome, would do more to enforce the provisions of this law than all of the opinions yet rendered by this Board up to this time appears to have accomplished.

A question was presented at the hearing as to the extent to which a telephone company operating in a given community should be required to cover the field tentatively occupied by it. In other words, to what extent may a telephone company be compelled to furnish telephone service in the community or field supposedly occupied by it. This matter is not squarely presented on the record, but inasmuch as it is the duty of this Board to promulgate rules and regulations governing the practice of telephony in this State, and because of the fact that numerous inquiries have been made, not only in this but in other cases, involving this same question, it appears to this Board that this is a fitting and proper occasion to lay down the rule that while it is true that each case must be decided upon the particular facts and circumstances attendant upon it, yet this Commission will expect every telephone company doing business in this State to furnish telephone service to all applicants within the field or particular community tentatively covered or intended to be supplied by the company in question.

At this time there was also submitted a question as to the right of a telephone company to demand that an intend-

ing subscriber shall, as a condition precedent to the receiving of telephone service, become a stockholder in the company, and this Commission, as announced in its former decisions in the general investigation, is unqualifiedly of the opinion that neither the laws of this State nor proper telephone practice justifies any telephone company in attempting to impose as a condition precedent to receiving telephone service, the condition that the intending subscriber must first become a stockholder, and it is only necessary to add here what was said in the general opinion upon this subject. In that opinion this question was covered in the following language:

“One of the matters which was urged upon the attention of this Commission in the course of the hearings at Mitchell and Rapid City was what appeared to be an effort upon the part of some companies to compel all persons who desire to become subscribers to also become stockholders in the company, on the apparent theory that telephone service would be refused unless the intending patron became a stockholder in the company. Neither under our statute nor at common law may a telephone company impose as one of the conditions of furnishing telephone service, that the intending subscriber shall purchase stock in the company. A telephone company may require the payment of its telephone rents in advance, and that a subscriber shall comply with its reasonable rules, take the proper care of its telephone equipment placed in its custody, and converse over its lines in proper and decorous language, and for breaches of these obligations may refuse telephone service. It may not, however, as a condition to furnishing telephone service, insist that an intending patron shall purchase stock in the company. The mere statement of the proposition advanced by the telephone company to impose as a condition of furnishing telephone service that the proposed subscriber must become a stockholder in the company contains its own reputation. If one telephone company may do this then all telephone companies may impose a like condition, and the result would soon be under such a rule, that every telephone company would require every patron to become a stockholder in the company. Such a practice cannot be permitted and must be immediately discontinued.”

From the record in this case it appears that the Sunrise Telephone Company owns and operates a rural party line between Hartford and Crooks and is connected with the exchange of the Hartford Telephone Company at that place, and with the exchange of the Crooks Telephone Com-

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pany at Crooks, and that there is an interchange of messages between the patrons of the Crooks and Hartford exchange without any compensation over this rural line, and also that although there is a long distance telephone toll line connecting these two exchanges, yet in fact, the operators of the exchanges at Hartford and Crooks indulge in the practice of routing toll messages between these two exchanges over the rural party line.

In former opinions rendered by this Board, it has been held that the two classes of telephone business should be kept separate and apart, and that toll lines should be used for toll line service only, and that rural party lines should be used for rural party line service only, and that a rural party line should never be used for the purpose of transmitting long distance toll messages. This must not be construed as prohibiting the origination or termination of toll messages on rural lines.

While the distance between Hartford and Crooks is not what might be termed a long distance, yet the toll messages between these two exchanges should be routed over the toll lines, for the same rule must be applied in this as in other instances. The toll business should be transacted over the toll lines, and the rural party lines and local exchanges should be devoted to that branch of the telephone service for which they were originally created. Rural party lines were never designed for the transmission of toll messages. There should be some degree of privacy for the transmission of long distance or toll messages, and privacy cannot be maintained where the service is furnished on a party line which will enable all persons renting 'phones which are connected with that particular line, to listen to the toll message. Aside from this there are other reasons inherent in the construction of a rural party telephone line which unfit it for the transmission of long distance toll messages.

It was also brought out at the hearing that one of the rural telephone lines connected with the exchange of the Hartford Telephone Company on a switching basis, pays an annual lump sum of \$500 for its switching service. In

former opinions handed down by this Board, because of the provisions of our statute, and particularly of that provision limiting the maximum switching fee to not to exceed 25 cents per month for each telephone instrument, the practice of making provision in a lump sum for switching, or at a message rate of 5 cents per message has been discouraged, and the telephone companies have been required to establish their rates on some plan recognizing the telephone instrument as the unit of service, in other words, to make a rate at so much per telephone instrument.

In one investigation conducted by this Board it appeared that the 5 cent charge per switch was adopted, and in numberless instances at the rate of 5 cents per switch, the total charge was found to amount to more than 25 cents per month, which is the maximum amount which may be charged by any telephone company for this service, under the statute. The telephone companies in question here, should, therefore, establish their rental rate on some basis at a rate of so much for each telephone instrument, and in any event, at a rate not to exceed 25 cents per month for each telephone instrument.

There was also brought to the attention of the Board in this case, a practice indulged in by some patrons, of furnishing their own ringing extension and, in some instances, their own ringing and talking extensions, and attaching them to the telephone equipment installed by the company. In a particular case to which attention was directed it was charged that a person having located in his place of residence a telephone instrument in the living rooms on the first floor, had purchased and attached to that instrument a telephone of his own, and this was wired so as to be located in his sleeping apartments upstairs. The purpose, of course, was that in case of calls in the night-time, the instrument in the sleeping apartments would be used in preference to the telephone instrument located in the lower portion of the house. This person insisted upon having this telephone service at the single rental rate for the residence telephone, and in doing so, in all probability, was not

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advised of the custom of telephone companies to furnish for their patrons, when the service was desired, ringing extension or ringing and talking extension as the case may be.

The telephone company in question asserts that it has the right to furnish this equipment and to make a monthly rental charge for such equipment. It is the opinion of the Board that the telephone companies' position is correct. If a subscriber may attach one instrument to a house 'phone he may attach any number of instruments to it, and still insist upon receiving all this service at a single rate. This position is untenable, for telephone companies quote rates for service which includes one wall or desk instrument. If additional service is required, the telephone company should be offered the opportunity to furnish it. In this instance, the telephone company has the undoubted right to furnish this ringing and talking extension set for the accommodation of its patrons and to make a reasonable monthly rental charge for this additional service.

ORDER.

In this cause the Commission having made and filed its decision containing its findings of facts and conclusions;

It is, therefore, ordered, considered and adjudged, That the telephone companies involved in this proceeding cease and desist from the practice of discriminating between those subscribers who are stockholders and those subscribers who are not stockholders, by charging a different rate to those who are not stockholders than to stockholders, and that from and after the service of this order, each of said telephone companies charge to its stockholder subscribers the same and identical telephone rentals and rates which are charged to subscribers who are not stockholders.

And it is further ordered, considered and adjudged, That the telephone companies, parties to this proceeding, cease

and desist from the charging of a message rate to exchange subscribers for the transmission of telephone messages from the subscribers' exchange to stations or instruments on rural party lines where the rural party line is connected with the subscribers exchange on a switching basis.

And it is further ordered, considered and adjudged, That the Hartford Telephone Company and the Sunrise Telephone Company and the Crooks Telephone Company cease and desist from the practice of routing toll messages between the towns of Hartford and Crooks over rural party lines, and that said companies be, and hereby are, commanded and required to route all toll messages between such cities or towns over the toll line connecting the Hartford and Crooks exchanges.

And it is further ordered, considered and adjudged, That for the switching service received at the exchanges at Canistota and Salem by rural telephone companies numbered 1 and 2, the charges be and hereby are fixed and established at a rate of $37\frac{1}{2}$ cents for each telephone instrument on said rural party lines connected with the Canistota and Salem exchanges, one-half of said charge, or $18\frac{3}{4}$ cents per 'phone, to be paid by said rural party lines numbered 1 and 2 to each exchange; and that the rates for switching service on the joint line between Montrose and Canistota be, and hereby are, fixed and established at $12\frac{1}{2}$ cents per telephone instrument for each instrument on said joint line, the switching charge accruing on the Canistota end of such joint line to be paid to the Montrose exchange, and the switching charge accruing on the Montrose portion of said joint line to be paid to the Canistota exchange; and that the rate for switching service on the direct line connecting the Hartman switch and the Montrose exchange be and hereby are fixed and established at a rate of 25 cents per month for each telephone instrument on said line, the total amount to be paid by the Hartman Telephone Company to the Montrose Telephone Company, and that for each telephone instrument located on the lines of the

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Hartman Telephone Company beyond the switch at Hartman, the switching charge for switching service at the Montrose exchange be and hereby is fixed and established at 12½ cents per telephone instrument on said lines, the total amount accruing to be paid by the Hartman Telephone Company to the Montrose Telephone Company, and that the switching at the Montrose exchange for any telephone instruments located on any of the lines of the Hartman Telephone Company beyond the switch, which have connection with two exchanges, be and hereby is fixed and established at 37½ cents to be paid as follows: 12½ cents to each exchange, and 12½ cents to the Hartman switch, and that messages from the Colton exchange or any other exchange through the Hartman switch to the Montrose, or any other exchange, must be transmitted over the toll line.

And it is further ordered, adjudged and decreed, That all rates for switching service from a rural party telephone line to and with any exchange shall be fixed on a basis using the telephone instrument located on the rural party line as the unit of service, and establishing a switching charge at a certain rate for each of such telephone instruments, the total charge in any event not to exceed 25 cents per month for each telephone instrument on any rural party line, and that all of the telephone companies made parties to this proceeding be, and hereby are, required to reduce all agreements to writing and to file true copies in the office of the Board of Railroad Commissioners.

It is further ordered, That in any cases where subscribers require either ringing or ringing and talking extension sets, the telephone companies shall furnish such ringing or ringing and talking sets, and shall fix and establish therefor, a reasonable rental charge.

This order shall take effect and be in force immediately upon its service.

Done in regular session at the city of Pierre, the capital, on this twenty-seventh day of April, A. D. 1914.

The foregoing opinion and order was on motion approved and concurred in unanimously with the exception that Commissioner Robinson objects to having that portion of the opinion treating the routing of toll messages over rural lines made a precedent in determining cases in all parts of the State.

O. P. KING *v.* HYDE COUNTY TELEPHONE COMPANY, A CORPORATION.

IN THE MATTER OF THE COMPLAINT OF EIGHTY-FOUR SUBSCRIBERS AGAINST THE HYDE COUNTY TELEPHONE COMPANY OF INSUFFICIENT TELEPHONE SERVICE.

IN THE MATTER OF THE APPLICATION OF THE HYDE COUNTY TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

Complaint No. F-30—F-33.

Decided May 4, 1914.

**Increase in Rates Upon Improvement in Service—Valuation of Property
—Cost of Reproduction—Present Value—Depreciation—
Return upon Investment—Estimated Revenue
Under Rates Prescribed by Commission.**

In accordance with the provisions of its previous order* in this case, the Board made an inspection of the property of the Hyde County Telephone Company and found† that considerable of the work ordered had been done by the respondent upon its city exchange, but that there was still considerable work to be done to put the plant in first class condition, that upon the rural lines less progress had been made than upon the city exchange, but that sufficient work had been done to insure fairly satisfactory service.

In view of the improvement in the company's service, the Board considered the application of the respondent for an increase in rates. Three valuations were submitted to the Board, one by the company, another by a telephone expert, and a third by one of the Board's officers. As the first valuation made no allowance for depreciation and as the second estimated only a depreciated value, these were discarded, the Board considering that both values were necessary elements to be considered.

* Printed in Commission Leaflet No. 30, at page 1282.—ED.

† The finding of the Commission is printed in this leaflet at page 128.—ED.

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Using the officer's valuation, the Board found that the reproductive value of the city exchange plant was \$5,135.98 and its present value was \$3,595.19, while the reproductive value of the rural lines was \$4,883.83 and their present value \$3,418.68.

Allowing 7 per cent. for depreciation and 7 per cent. for interest on the investment, in addition to the expenses of operation, maintenance and management, the Board found that under the present rates there was an annual deficit of \$854.31. A schedule of rates for both exchange and rural service was thereupon prescribed.

Applying the new schedule of rates to the existing business and making a few reductions in expenses, as well as some slight readjustments of both receipts and disbursements between exchange and rural service, it appeared that the exchange plant would show a credit balance of \$450.03, whereas the rural lines would show a debit balance of \$408.94, this causing the plant as a whole to show a credit balance of \$41.09.

An order was issued authorizing the company to put into effect the schedule of rates prescribed by the Board.*

REPORT.

Dated April 27, 1914.

ROBINSON, Commissioner:

This proceeding was originally commenced by the filing of a complaint on July 25, 1913, by Mr. O. P. King of Highmore, in which it was charged that the defendant made discriminatory and different charges to different of its patrons for the same service; that it failed to give the patrons adequate service; gave its patrons only two hours' service on Sunday, and failed to post its schedule in its exchange as required by law.

Afterwards, on the twenty-eighth day of July, 1913, protest was forwarded to the Commission by the city auditor of the city of Highmore, which protest is signed by eighty-four subscribers of defendant telephone company, in which it was charged that the protestants are dissatisfied with the service rendered by the company, and request that the telephone service be given until at least midnight of each day; that holiday and Sunday service be required, and that emergency calls be promptly answered at all times; and

* Editor's headnote.

that all patrons be given the same fair and impartial treatment in the matter of service and rentals.

Upon the same date, July 28, 1913, the defendant, the Hyde County Telephone Company, filed an application to increase rates.

The evidence of the protestants against the telephone service, amounting to practically one hundred and fourteen pages, was taken by deposition at the city of Highmore on the fifteenth day of August, 1913; subsequently, and on the sixth day of September, 1913, additional evidence was taken at the office of the Commission, and the protestants filed their invoice and valuation of the Hyde County Telephone Company's plant.

Additional time was requested on behalf of both the complainants and defendants and particularly on behalf of the Hyde County Telephone Company in order that it might prepare and file in connection with the application for an increase in rates an inventory of the property showing the value of the plant, and a financial statement showing the income and operating expenses.

After the filing of this information, another hearing was held at the office of the Commission on the twenty-third day of December, 1913, at which time the testimony on behalf of the Hyde County Telephone Company was introduced.

During the time intervening between the filing of the inventory of the Hyde County Telephone Company and the hearing on December 23, your Commissioner caused an examination to be made of the property of the defendant and an investigation to be conducted into the telephone service being rendered by it to the patrons in Highmore and vicinity.

From all the evidence introduced in this case, as well as the examination and investigation made under the supervision of the Commission of the property and into the service of the Hyde County Telephone Company in Highmore and vicinity, it appears to the satisfaction of your Commissioner that the complaints against the telephone

service of the Hyde County Telephone Company are well founded, in that the entire telephone plant of the Hyde County Telephone Company appears to be in such physical condition as to necessitate the entire overhauling of it.

Although there is a lineman in connection with this telephone company, it appears to the satisfaction of your Commissioner that he is not devoting the necessary amount of time to keeping the plant in proper condition, for instance, on the rural lines of this company, in the vicinity of Highmore, the wires have been permitted in a number of instances, to remain on the ground for an indefinite period of time, and when taken up have been merely dropped in between the bracket and the telephone pole, whereas proper and suitable construction of the telephone plant requires when the lineman picked up the wires that he should have tied them to the insulators on each pole.

It also appears from this testimony that barbed wire is used in portions of the line for transmission; this should be entirely eliminated. The use of 2 by 4's, spiked to fence posts in lieu of and in substitution for telephone poles, is disapproved by your Commissioner. It also appears that the company is using on the same line bridging 'phones and series 'phones; if this is the practice, it does not meet with the approval of your Commissioner, as good service cannot be rendered with this class of construction.

Numerous complaints appear to have been made against this company by its subscribers with reference to its service of the central office, and discourtesies received at the hands of the manager and the operators at the central exchange. Without going into detail it is sufficient to say that these complaints appear well grounded.

After a careful examination of all the evidence in this case your Commissioner is of the opinion that the Hyde County Telephone Company should immediately eliminate the use of all barbed wire from its transmission lines and the use of bridging and series 'phones on the same line; that all transmission lines should be carefully inspected and put in first class condition, and the wires tied to all

insulators; that arrangements should be immediately for continuous service, except that for night service it will not be necessary to have an operator continually at the switchboard, but someone should sleep in a room adjoining the exchange or room where the switchboard is located with the night bell attached so as to be able to promptly answer all night calls; the operator and manager should carefully avoid any improper treatment of the patrons, and all complaints entered by subscribers should be immediately investigated and, if found to be well founded, corrected.

It is the opinion of your Commissioner that the Board should insist that all telephone companies doing business in this State furnish to their patrons the highest type of telephone service which can be had, and that all patrons of telephone companies be treated in a courteous and respectful manner, and all complaints immediately investigated, and proper remedy applied if found necessary.

While it is the opinion of your Commissioner that the Board should require from all telephone companies and their operators, manager and employees the highest type of service, it will also require of the public that the operators, managers and employees of telephone companies be likewise treated in a courteous and respectful manner.

In view of the foregoing findings of fact, the Commission, on the sixth day of January, issued an order requiring the Hyde County Telephone Company to fully repair their plant and put it in good order for efficient service within thirty days from the date of the order. They also provided for an inspection of the plant and the service given or rendered after such repairs had been completed. In accordance with this last provision, Commissioner Murphy was delegated to inspect this plant and the quality of the service rendered, which inspection he made on the seventh and eighth of April and this report* of Commissioner Murphy is hereby adopted as a part of this report, so that it will only be necessary to mention the substance of the report

* Printed at page 128 of this leaflet.— Ed.

here which is as follows: Commissioner Murphy finds that considerable work has been done upon the city exchange, but the repairs have not been completed, that there is considerable work to be to put the plant in first class order. Upon the rural lines there seems to have been less work done than upon the city exchange, but it would seem that enough has been done so that the telephone company is giving quite satisfactory service, as the patrons upon the rural lines and of the city exchange seem to be well satisfied with the improvements in the service. In view of the improved service and partial completion of the repairs your Commissioner is of the opinion that the time in which to complete said repairs should be extended to June 1, 1914. With this last stipulation in view and the improved service, your Commissioner would recommend the consideration of the application of the company for an increase of rates.

But before I proceed with that part of this report I wish to make a general statement that should apply to all telephone companies and their patrons, whether at Highmore or elsewhere.

Your Commissioner is of the opinion that all telephone companies should afford adequate and efficient service, and that their patrons should receive from them affable and courteous treatment. It is also the duty of their patrons to take good care of the instruments entrusted to their care and use, also to be considerate and forbearing, affable and courteous to the manager and operators of the company. Your Commissioner is of the opinion that the more of the last named practice that can be adopted and installed into the telephone business, the better it will be for all who are compelled to avail themselves of telephone service and for the company.

In the adjustment of rates I will pursue the rules previously followed by the Commission by first ascertaining the present and reproductive value of the entire plant; second, the cost of operation, maintenance, taxes, superintendence, allowing 7 per cent. upon the reproductive value for depreciation, this depreciation fund to be set aside in

a separate account to be used for replacement or renewals, so that the plant may be kept in first class condition; and 7 per cent. upon the present value for the interest upon the investment; third, the rates adopted should be ample to cover all the above named expenses.

It will be noted that there have been three valuations of this plant, one by the owner, Mr. Van Camp; one by a Mr. Allen, a telephone expert from Chicago; and one by the Commission's officers. While they do not greatly differ in valuation, Mr. Van Camp's valuation makes no allowance for depreciation, and Mr. Allen's makes a depreciated value only, so that neither of these valuations could be used in rate adjustment as both values have to be considered in the adjustment of the rates. The valuation of the Commission's officers considers both the present or depreciated value and the reproductive value of the plant; they also made a very thorough inspection of the entire plant, the cost of material and labor was based upon units of value that have been adopted upon actual cost of material and labor. The following table shows the present and the reproductive value of the city plant and the rural lines separately:

CITY PLANT.

Present value	\$3,595 19	Reproductive value	\$5,135 98
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RURAL LINES.

Present value	\$3,418 68	Reproductive value	\$4,883 83
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It will be noted that we have considered the depreciation at 30 per cent., which I believe to be a fair rate of depreciation in view of the fact that some repairs have been made.

The following table shows the receipts and disbursements of the entire plant based upon the following rates, which are the present rates: business 'phones \$18.00 per year, residence 'phones \$12.00 per year, desk 'phones \$3.00 per year extra.

RECEIPTS AND DISBURSEMENTS OF ENTIRE PLANT.

Receipts.

Rent from 'phones.....	\$2,830 00
Commission from Dakota Central switching country 'phones and incidentals	601 25
	<hr/>
	\$3,431 25

Disbursements.

Operation, maintenance and management.....	\$3,150 63
Depreciation at 7 per cent.....	701 29
Interest on investment at 7 per cent.....	433 64
Debit balance	854 31
	<hr/>
	\$4,285 56
	<hr/>
	\$4,285 56

It will be seen that at the present rates there is a deficit of \$854.31. It is the opinion of your Commissioner that no plant can be successfully conducted any length of time upon such a basis of rates. I would, therefore, recommend the adoption of the following basis of rates:

Business 'phones	\$24 00 per year
Single line residence 'phones.....	15 00 per year
Party line residence 'phones.....	13 20 per year
Rural line 'phones	15 00 per year
Desk and pendant 'phones, extra.....	3 00 per year
Payable on or before the tenth day of the current month.	

The following tables show the receipts and disbursements of the city and rural lines separately, and in this statement we have made some changes. We have reduced the lineman and manager's salary \$200; I have credited the city plant with switching 56 country 'phones \$168 and charged the same amount to the rural lines; in lieu of this credit, I have charged the city plant with the following expenses: rent, light, heat and operators' salary.

RECEIPTS AND DISBURSEMENTS OF THE CITY PLANT.

Receipts.

32 business 'phones at \$24.00 per year.....	\$768 00
14 business desk 'phones at \$27.00 per year.....	378 00
20 single line residence 'phones at \$15.00 per year.....	300 00
84 party line residence 'phones at \$13.20 per year.....	1,108 80
Switching 94 'phones at \$3.00 per year.....	282 00
Switching 56 rural 'phones at \$3.00.....	168 00
Connecting fees at 25 cents each.....	3 00
Sundry sales	10 00
Miscellaneous earnings	42 00
Commission upon long distance messages.....	254 50

Disbursements.

Operators' salary	\$667 00
Rent, light, heat and water.....	330 00
3/4 lineman's and manager's salaries.....	1,026 58
3/4 material	112 50
4/5 taxes	123 84
Insurance	3 92
3/4 stationery	9 00
Interest at 7 per cent. on present value.....	251 66
Depreciation at 7 per cent. on reproductive value.....	359 52
Credit balance	450 03

\$3,334 05 \$3,334 05

RECEIPTS AND DISBURSEMENTS OF RURAL LINES.

Receipts.

56 'phones at \$15.00 per year.....	\$840 00
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Disbursements.

1/4 salary, lineman and manager.....	\$342 19
1/4 material	37 50
All livery hire	86 10
1/5 taxes	30 96
Switching 56 'phones at \$3.00 per year.....	168 00
Stationery	3 00
Depreciation at 7 per cent. on reproductive value.....	341 88
Interest at 7 per cent. on present value.....	239 31
Debit balance	408 94

\$1,248 94 \$1,248 94

TOTAL RECEIPTS AND DISBURSEMENTS OF ENTIRE PLANT.

Total receipts	\$4,174 05
Total disbursements	4,132 96

Credit balance	\$41 09
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Upon the above proposed rate basis there is a credit balance of \$41.09, which amount, I believe, should be carried to maintenance account.

Your Commissioner would, therefore, recommend the promulgation of the following rates by the Hyde County Telephone Company:

Business 'phones	\$2 00 per month
Single line residence 'phones.....	1 25 per month
Party line residence 'phones (not to exceed 3 on line)	1 10 per month
Rural line 'phones.....	1 25 per month
Complete extension 'phone, additional on same line..	1 00 per month
Extension talking set only.....	50 per month
Per call on rural line to non-subscriber.....	15 per call

(To apply only to Hyde County company's line; when over other lines the same price, the company retaining 5 cents, and balance to be paid to the company over whose line the message goes.)

Switching farm line 'phones, per phone.....	25 per month
Desk and pendant 'phones, extra.....	25 per month

Payable on or before the tenth day of the current month.

These rates to take effect April 1, 1914.

Your Commissioner would further recommend that the Hyde County Telephone Company be required to keep full account of receipts and disbursements from June 1, 1914, to January 1, 1915, the same to be submitted to the Commission for further consideration.

Dated at Pierre, the capital, this twenty-seventh day of April, 1914.

ORDER.

Dated May 4, 1914.

The above entitled cause having been referred to Commissioner Robinson, and he having prepared and submitted his report containing recommendations which report was, on the fourth day of May, 1914, approved and adopted as the report and findings of the Board of Railroad Commissioners of the State of South Dakota, and the Board being fully advised in the premises:

It is, therefore, ordered, considered and adjudged, That from and after the first day of April, 1914, the Hyde County

Telephone Company, a corporation, be, and hereby is, authorized to charge, collect and receive for telephone service, at the city of Highmore and in Hyde County, the following rates to wit:

Business telephones	\$2 00 per month
Main line residence telephones.....	1 25 per month
Party line residence 'phones.....	1 10 per month
Rural party line telephones.....	1 25 per month
Ringling and talking extension sets.....	1 00 per month
Ringling extension sets only.....	50 per month
Per call on rural line to non-subscriber.....	15 per call

(This last named rate to apply only on rural party lines of the Hyde County Telephone Company; and when a message is sent over the lines of any other rural party line, the charge shall be 15 cents, 10 cents of which shall be paid to the rural party line, and 5 cents retained by the Hyde County Telephone Company.)

Switching rural party line telephones for each telephone instrument	25 per month
Desk and pendant telephones, extra.....	25 per month

The foregoing rates shall be payable on or before the tenth day of the current month.

And it is further ordered, That the Hyde County Telephone Company be, and hereby is, commanded and required in its telephone practice to conform in all things to the findings and recommendations contained in the report made by Commissioner Robinson, and adopted by the Commission in this case, and to keep a correct and accurate account of all its receipts and disbursements from June 1, 1914, to January 1, 1915, at which time the same shall be submitted to this Commission for further consideration.

Done in regular session at the city of Pierre, the capital, on this fourth day of May, A. D. 1914.

REPORT OF COMMISSIONER MURPHY.

Dated April 8, 1914.

As per direction of this Board, I investigated the service conditions of the Hyde County Telephone Company at Highmore, South Dakota, on April 6 and 7; also on the same dates I endeavored to ascertain whether or not the said Hyde County Telephone Company had complied

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with the order * of the Board of January 6, 1914, in connection with the furnishing of continuous service and the repair of the lines.

In so far as the service given at the present time is concerned, I found that the subscribers generally were well satisfied. In talking with different subscribers on each of the rural lines, I was pleased to discover that the transmission was good, and that the people were also pleased to state that the service had improved greatly in the last few months. The treatment accorded the operator is of a more pleasing nature than formerly, and the operators are giving more prompt, courteous and efficient service.

It is my conclusion that conditions affecting the telephone situation at Highmore have improved very materially. In regard to the improvements and betterments required in the order above mentioned, it is my opinion, after a personal inspection, that the order has not been complied with. While some work has been done, and no doubt a slight improvement made, it is, nevertheless, evident that there is much needed improvement necessary, and further, it will require some time and considerable expense to place the rural lines in good condition. The 2 by 4 construction has not been replaced by pole line, a number of insulators are not in place, and in many places the wire is not tied to the insulators. The cross-arms are, in many instances, loose from the pole, the corner poles are not properly guyed, and in many cases not guyed at all. The poles destroyed by lightning and other causes have not been replaced.

From the above statement of conditions it will readily be seen that considerable work and repairs are necessary, and that the conditions named in the order have not been met. I am of the opinion that some of the necessary work could not well have been done during the winter season, owing to weather and soil conditions, and that therefore the company should not be severely censured for not complying fully with the order, but on the other hand, many things were left undone that could and should have been attended to. It is true that the failure to make the required repairs is at this time of more importance to the company than to the public, for the reason that the failure to put the lines in good shape will certainly increase the wear and tear of the plant and will require a more expensive maintenance later. The company should be compelled to make the necessary repairs and construction to put the lines in first class condition, both as a protection to the investor, and later, the public. For, notwithstanding the fact that good service can be given at the present time, it is also a fact that if the conditions which have been applied in the past are permitted to continue, it will be but a short time until the service will seriously suffer.

As to passing an opinion on the desirability of requiring a full compliance with the order before considering the rate advance involved in this case, I defer doing so.

* Printed in Commission Leaflet No. 30, at page 1282.—Ed.

WISCONSIN.

Railroad Commission.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE LINES
OF THE WISCONSIN TELEPHONE COMPANY IN THE TOWN
OF ROCK, ROCK COUNTY, WISCONSIN.

Decided April 23, 1914.

Public Convenience and Necessity—Invasion of Occupied Field—Duplication of Facilities—Service and Rates of Company Occupying Field—Proposed Extension of Lines not Warranted.

The Wisconsin Telephone Company having filed notice of its intention to extend its telephone lines in the town of Rock in order to reach a certain farmer who had applied for telephonic service, the Rock County Telephone Company, which operated local lines in Rock, filed its objection. It appeared that the proposed extension of the applicant's line would involve a paralleling of the objector's line on the same highway for a distance of about a quarter of a mile and would result in the acquisition by the applicant of one of the objector's subscribers. It further appeared that the prospective subscriber's reason for desiring the applicant's service was that the objector's service was inadequate and also that the applicant's long distance service was more extensive than that of the objector.

Held: That, in accordance with the provisions of Chapter 610 of the Laws of 1913, where reasonably adequate service can be obtained at reasonable rates from one public utility, another public utility shall not be permitted to enter into competition for the same service;

That where one telephone line already runs on a highway past a residence and is serving that residence, or is able to serve it, reasonably well, another company should not ordinarily be permitted to construct a parallel line on the same highway to reach the residence in question;

That the proper procedure in a case of unsatisfactory service is to make complaint in the usual way before asking the Commission to apply the more drastic remedy of permitting the entrance of a competing company into the field;

That relief will be afforded the objector's subscribers in the matter of long distance service by the Commission's decision in a pending proceeding involving the establishment of physical connection between the lines of the applicant and those of the objector;

That, contrary to the contention of the applicant, the paralleling by the applicant of a quarter mile of the objector's line is more than a mere technical violation of the law;

That public convenience and necessity do not require the extension of the applicant's line in the manner proposed.*

OPINION AND DECISION.

This case arises upon the notice filed by the Wisconsin Telephone Company with this Commission on March 18, 1914, relating to two proposed extensions of its lines for local service in the town of Rock, Rock County. Objection to one of these extensions was made by the Rock County Telephone Company, and a hearing was held in the matter on April 15, 1914, the Wisconsin Telephone Company having waived its right to have the matter determined within twenty days of the filing of its notice. At the hearing, which was held at Janesville, the Wisconsin Telephone Company was represented by *J. F. Krizek*, and the Rock County Telephone Company by *William Ruger*.

One of the extensions proposed by the Wisconsin Telephone Company did not occasion any objection by the Rock County Telephone Company. It is located in section 4 of the town of Rock and the Wisconsin Telephone Company has a line much nearer the point of the proposed service than that of the Rock County Telephone Company. There is no need, as to this extension, for any discussion of the merits of the proposition.

The other extension is in section 6 of the town of Rock, and is intended to serve the residence on the "Green Cove Farm," owned by John L. Fisher of Janesville. This residence fronts on a north and south road along which the line of the Rock County Telephone Company is now constructed and in service. This line has two subscribers on the same north and south road above Mr. Fisher's residence and one subscriber below it. Mr. Fisher had the Rock County telephone in his house until about April 1, 1914, but decided to change to the Wisconsin Telephone

* Editor's headnote.

Company's line, and ordered the Rock County instrument removed. Since that time there has been no telephone service in the residence in question. The Wisconsin Telephone Company's line which is proposed to be extended runs along an east and west road and crosses the road on which the Fisher residence is located, about a quarter of a mile south of the house. The proposed extension would therefore cover about a quarter of a mile, or, as the testimony shows, would require the setting of about ten poles. This extension would of course proceed upon the same road on which the Rock County line is located.

According to the testimony of Mr. Fisher as introduced at the hearing, one of the main reasons for his discontinuance of the Rock County service was the unsatisfactory kind of treatment he was receiving from that company. He stated that during the entire month of March, 1914, he was unable to get service on the farm and that at other times the service was slow and unsatisfactory and he considered that the company was discriminating against him personally. One ground of his complaint seemed to be that in calling his farm from his city residence it was necessary for him to call first the farm operator and then give that operator the number desired; but the testimony shows that substantially the same practice is followed on the Wisconsin Telephone Company's rural system. Another frequent source of dissatisfaction seemed to have been the busy condition of the farm line, which caused a good deal of difficulty in obtaining service just when it was desired. It appears that when Mr. Fisher was connected with the Rock County line there were six other subscribers on that line, while the Wisconsin Telephone Company's line which is proposed to be extended now carries ten subscribers.

The Rock County Telephone Company introduced testimony to the effect that that company had done all in its power to give Mr. Fisher good service at the Green Cove Farm. It was testified that Mr. Fisher had always been a fault finder and the company had made unusual efforts on this account to satisfy him. As to the lack of service dur-

ing March, it was stated that the cutting over of the company's lines to its new central office, recently completed, had caused some interruption of service.

In addition to his complaint as to the quality of service he was getting over the Rock County line, Mr. Fisher advanced the lack of long distance connection over that line as another reason for his change of lines. It seems that Green Cove Farm is largely devoted to stock breeding and that long distance calls are very frequent between that farm and other places in Wisconsin and adjoining States. The Rock County Telephone Company is connected with an independent toll line company whose lines and connections cover a few neighboring counties, but for reaching such points as Madison, Milwaukee and other more distant places the Rock County line cannot be used. There is no physical connection for any purpose whatever between the lines of the two companies. The Wisconsin Telephone Company keeps a Rock County local telephone in its office and when toll calls come in for subscribers of that company this telephone is used to inform them of the call so that they may go to a Bell instrument for their conversation.

It is apparent on the face of things that the proposed extension of the Wisconsin Telephone Company's line will involve a paralleling of the Rock County line on the same highway, for a distance of about a quarter of a mile. It is also apparent that the Rock County Telephone Company is in position to give service to the Green Cove Farm, and the extension of the Wisconsin Telephone Company's line would result in the acquisition by one company of a subscriber lost by the other. In other words, the extension of the Bell line would result in a competition which would not be possible if the extension were not to be made. Chapter 610 of the Laws of 1913 extends to telephone companies the same kind of protection against unnecessary competition that had already been given by the State to other public utilities. This is in pursuance of the policy of the law that where reasonably adequate service can be obtained at

reasonable rates from one public utility another public utility shall not be permitted to enter into competition for the same service. The extension of this principle to rural telephone companies has resulted in some complications, owing to the fact that at the time the statute was passed rural telephone lines throughout the State were intermingled in such a way that a great deal of paralleling already existed. This Commission has, however, taken the position that where one line already runs on a highway past a residence and is serving that residence, or is able to serve it, reasonably well, another company ought not usually to be permitted to construct a parallel line on the same highway to reach the residence in question. In other words, public convenience and necessity do not require the duplication of lines in such a case. This situation has arisen several times before the Commission, and permission to parallel has uniformly been refused. In re *Proposed Extension of Lines of the Ettrick Telephone Company** (1913) 12 W. R. C. R. 744; In re *Proposed Extension of the Lines of the Clinton Telephone Company*† (1913) 13 W. R. C. R. 166; In re *Proposed Extension of the Line of the West Kewaunee and Western Telephone Company*‡ (1914) 14 W. R. C. R. —; In the *Matter of the Alleged Violation of Chapter 610 of the Laws of 1913 by the Lisbon Telephone Company*§ (1914) 14 W. R. C. R. —.

The complaint of Mr. Fisher as to poor service obtained by him over the Rock County lines seems to relate mainly to an inability to get prompt connection. As far as this is due to the necessity of ringing two operators the same trouble would necessarily be experienced on the Bell line. As far as it has to do with the number of persons on the line and the frequency of "busy" answers, the situation on the Bell line would also seem to be quite similar. Mr. Fisher testified in addition to his absolute inability to get

* Printed in Commission Leaflet No. 24, at page 485.— Ed.

† Printed in Commission Leaflet No. 25, at page 910.— Ed.

‡ Printed in Commission Leaflet No. 30, at page 1296.— Ed.

§ Printed in Commission Leaflet No. 29, at page 1024.— Ed.

service during a considerable period of time and to what he considered to be unfair discrimination against him in the matter of putting through his calls promptly and accurately. These are matters on which the Commission has power to make the fullest investigation and to take such action as the circumstances require in the way of improving the service and preventing discrimination. The question of service, although usually involved in cases of this kind, is really collateral to the issue, since the law provides a specific procedure by which such matters may be brought before the Commission. The main question in such a case as this is whether the Rock County Telephone Company is able to give reasonably adequate service at the point in question, and there seems to be nothing in the evidence to indicate that it is not. The company's lines, as far as we are advised, are kept in working order. It has a new and presumably adequate switchboard and other central office equipment and we have no reason to believe that the standards of its construction and maintenance are not such as to make good service possible on the Green Cove Farm. It must be borne in mind that city service and rural service are not the same, and that a person on a farm line with six or eight other subscribers must expect to find the line busy at times. As this Commission has said in other cases, the proper procedure in case the service is unsatisfactory is to make complaint in the usual way before asking the Commission to apply the more drastic remedy of permitting the entrance of a competing company into the field. *In the Matter of the Alleged Violation of Chapter 610 of the Laws of 1913 by the Lisbon Telephone Company** (1914) 14 W. R. C. R. —.

The matter of long distance connection presents a different question. The evidence shows that there is no physical connection between the two companies and that a person having the Rock County telephone is absolutely unable to send or receive toll calls except over a limited

* Printed in Commission Leaflet No. 29, at page 1024.— Ed.

area in which the companies affiliated and connected with the Rock County lines are operating. To a business establishment of the character of the Green Cove Farm this lack of long distance connection is undoubtedly a serious thing. What effect it should be permitted to have on cases of this kind need not be decided, however, for the reason that there is now pending before the Commission, and will very shortly be decided, a proceeding against the two telephone companies here involved in which physical connection between them for long distance service is asked. It is sufficient to say that upon the decision of this case such relief will be afforded as will obviate the complaint of Mr. Fisher with respect to lack of long distance connection.

It appeared to be the position of the Wisconsin Telephone Company upon the hearing of the case that the paralleling of lines proposed is so short as to be merely a technical violation, if any violation at all, of the principle of the law. We do not agree to this view, however. We believe that a paralleling of a quarter of a mile is more than a technicality. It would certainly be very difficult for the Commission to permit a quarter of a mile of duplication, and then withhold its sanction to a further extension of the same line for another quarter of a mile, and so on. It would also be difficult to forbid one company to parallel for a third of a half mile after permitting another company to parallel for a quarter of a mile.

It appears, then, that Mr. Fisher, by reinstating the Rock County telephone, can obtain service without causing any paralleling of lines, and there is nothing in the record to indicate that public convenience and necessity require the duplication of lines which would be involved in the proposed extension of the Wisconsin Telephone Company.

Owing to what seemed to be an emergency condition on the Green Cove Farm, caused by the sickness of several persons there, Mr. Fisher on April 17 asked this Commission whether permission might not be given for a temporary extension of the Wisconsin Telephone Company's line upon the fences and trees to his residence, pending the de-

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cision of this case. Since the Wisconsin Telephone Company seemed to be willing to accommodate Mr. Fisher to this extent, and also expressed its willingness to take the line down if the decision in this case should be adverse to it, the Commission offered no objection to the furnishing of a temporary service, but stipulated that the building of the temporary line should have no effect whatever upon its decision in the case. It follows from these circumstances that the temporary service is to be discontinued upon receipt by the Wisconsin Telephone Company of this decision.

We, therefore, find and determine, That public convenience and necessity do not require the extension of the line of the Wisconsin Telephone Company in section 6 of the town of Rock, Rock County, Wisconsin, in the manner proposed by said company in its notice filed with this Commission on March 18, 1914.

Dated this twenty-third day of April, 1914.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE LINE
OF THE MAYVILLE RURAL TELEPHONE COMPANY IN THE
TOWNS OF THERESA AND HERMAN, DODGE COUNTY, WIS-
CONSIN.

Decided April 28, 1914.

**Public Convenience and Necessity—Invasion of Occupied Field—
Duplication of Facilities.**

OPINION AND DECISION.

On April 8, 1913, this Commission was notified by the Mayville Rural Telephone Company of proposed extensions to its line in the towns of Theresa and Herman, Dodge County, Wisconsin, and, upon the filing of objection by the Theresa Union Telephone Company, a hearing was held on the matter at Theresa, on April 21, 1914. The Theresa Union Telephone Company was represented by *Nathan Haessly*, and the Mayville Rural Telephone Company by *H. F. Ringle, F. A. Justmann* and *Albert Zastrow*.

It appears that a number of persons residing in the towns of Theresa and Herman have applied to the Mayville Rural Telephone Company for service and that the latter company, in filing its notice with the Commission, was acting at the instance of the proposed subscribers and without any desire to encroach unduly on the territory of the Theresa Union Telephone Company. The latter has a line for local service running north and south through sections 10 and 3 of the town of Herman and sections 34 and 27 of the town of Theresa. The majority of the proposed subscribers of the Mayville company reside in territory west of the Theresa Union Telephone Company's line and the latter company makes no objection to the extension of the Mayville company's line to them. In fact, they are clearly located in the territory of the Mayville company and nearer its lines than those of the Theresa Union Telephone Company. Three of the proposed subscribers, however, live on the north and south highway on which the Theresa line is in operation and one other is very near that highway, being a few rods east of it on a cross road. The Mayville lines at present are all west of the north and south road on which the Theresa line is built and if extended to the four subscribers just mentioned these lines would parallel the Theresa line for about a mile. If the four subscribers are eliminated from the proposed extension the two companies' lines will not parallel one another at any points involved in this case and the respective territories of the two companies will be well defined.

The Theresa line is apparently able to serve the four persons living on and near the highway which that line serves and there is no occasion for any duplication of the Theresa line by the Mayville company. Subscribers on the Theresa line have free service to Mayville, so that no toll expense is occasioned by the interchange of connection between the two lines. The only reason given at the hearing for any paralleling of the Theresa line is the fact that the farmers located in sections 3 and 34 desire to be on the same line as their neighbors so that they may converse

without ringing central office. This does not seem to be a sufficient reason for permitting the duplication of lines proposed here.

One signer of the application for Mayville Rural Telephone Company service resides one and a half miles east of the Theresa line and fully three miles east of the nearest point on the Mayville line. This proposed subscriber is so clearly out of the territory of the Mayville company that we do not presume that company would care to extend to him even if permission were granted. At any rate, it does not seem possible that public convenience and necessity can require the extension of the Mayville line to serve him.

The extensions proposed by the Mayville company west of the road on which the Theresa line is operating will be permitted to proceed, but those which would serve subscribers residing along that road, on either side or east of that road, do not appear to be required by public convenience and necessity.

We, therefore, find and determine, That public convenience and necessity do not require the proposed extensions of the Mayville Rural Telephone Company as described in its notice filed with this Commission April 8, 1914, in so far as such extension would serve subscribers living along or east of the north and south highway running through the center of sections 3 of the town of Herman and 34 of the town of Theresa.

Dated at Madison, Wisconsin, this twenty-eighth day of April, 1914.

In re APPLICATION OF THE BADGER STATE TELEPHONE AND
TELEGRAPH COMPANY FOR AUTHORITY TO INCREASE RATES.

Decided April 29, 1914.

Increase in Rates for Telephonic Service—Revision of Rules and Regulations.

This was an application by the Badger State Telephone and Telegraph Company for authority to increase its rates for telephonic service at Neillsville and Granton, on the ground that the revenue yielded by the

existing rates was insufficient to meet the demand for adequate service, and to provide for proper sinking funds and a fair return upon the capital invested. Application was also made for authority to substitute certain rules and regulations for those already in use.

Valuation of Property—Cost of Reproduction—Present Value.

The Commission made a valuation of the applicant's property, and found that cost of reproduction, new, and the present value of the property devoted to the local, rural, toll and switching services, respectively.

Excluding from its calculations all consideration of the toll plant, inasmuch as toll rates were not involved in the proceeding, the Commission computed the operating expenses, depreciation charges and interest charges of the exchange and rural plants, and estimated the probable earnings under the proposed schedule of rates.

Held: That the proposed rates should be approved with the exception of the rate for rural service, for which a rate of \$16.00 should be prescribed in lieu of the proposed rate of \$18.00 provided that payment for such service is made yearly in advance, otherwise, the rate of \$18.00 to be effective.

That the rates should be effective only upon the installation of full metallic circuits.

Rules and Regulations—Penalties—Party Line Service—Non-Subscriber Charges.

Held: That the rules proposed by the company are in the main reasonable, but that the following modifications should be made:

1. Penalties for delayed payment of bills should be slightly lower in amount than those proposed.

2. The provisions that the company should not hold itself liable to furnish party line service unless the line could be kept full to its capacity, should be rescinded.

3. The provision for charging non-subscribers 5 cents per call for local service and 10 cents per call for rural service, should be discontinued, except for service rendered at pay stations and over trunk lines between exchanges.

An order was made by the Commission in accordance with its conclusions.*

OPINION AND DECISION.

This application was dated January 2, 1914. Applicant is a telephone company operating exchange systems in Neillsville and Granton and surrounding rural territory and operating a toll system.

* Editor's headnote.

The petition enumerates the rates and rules in effect as follows:

	RATES.	Per year
<i>Neillsville:</i>		
Business telephone, one-party.....		\$24 00
Residence telephone, one-, two- and four-party.....		12 00
Rural telephones, first year.....		15 00
Rural telephones thereafter.....		12 00
Extension bells		no charge
Long distance sets.....		\$3 00
<i>Granton:</i>		
Business telephones		18 00
Residence telephones		12 00
Rural telephones		12 00
Extension bells		no charge
Long distance sets.....		\$3 00
For Neillsville or Marshfield.....		6 00
Service covering three local exchanges.....		36 00

RULES.

'Phones are installed by the company with the understanding that service will be retained for a period of one year, or else subscriber must bear the cost of installation.

Service for short periods at rates to meet each special case.

Local service is offered from 6 A. M. to 10 P. M. A fee of 10 cents will be charged on night calls.

Local rural line service is free to subscribers only; if a non-subscriber uses this service a fee of 10 cents must be collected.

Non-subscribers should pay a fee of 5 cents for local service. A fee to cover the expense will be charged for the removal of the telephone instrument from its present location to another.

Service bills are payable monthly.

Service will be discontinued for non-payment of bills.

Subscribers are responsible for all toll originating at their stations.

The subscriber must pay for all careless breakage at his station.

Extra territory rates are not quoted for periods of less than six months.

Extra territory privileges do not give any toll line privileges.

The reasons set forth in the application for asking for increased rates are that present rates are insufficient to:

(1) Meet the required demands for adequate service.

(2) Provide for the sinking funds made necessary by the public utility act.

(3) Provide satisfactory dividends upon the capital invested.

Application is made for authority to abolish all existing rates and rules for exchange service and establish the following rates and rules on the basis of a combined Neillsville and Granton exchange service; the exchange limits at Neillsville to be one mile from the central office and the exchange limit at Granton to be one-half mile from the central office.

In all cases where common battery service is designated, the same shall apply to service in the city of Neillsville, and where magneto service is designated the same shall apply to service at Granton.

Rural service shall be designated as "Rural" and shall apply to all stations outside the regular exchange limits.

Business Telephones:

Common battery, one-party, unlimited service..	\$30 00 per annum
Common battery, two-party, unlimited service..	24 00 per annum
Magneto (Granton) one-party, unlimited service.	24 00 per annum
Extension sets, in same building and for business service only, without listing.....	6 00 per annum
Extension bells, in same building, ordinary ...	1 80 per annum
Extension bells, in same building, 4-inch gong..	3 00 per annum
Extension bells, in same building, 9-inch gong..	9 00 per annum
Joint-user, with consent of subscriber and company listed	12 00 per annum
Extra listing in directory, same firm and business	1 20 per annum
Individual line, receiving only.....	12 00 per annum

Residence Telephones:

Common battery, one-party, unlimited service..	18 00 per annum
Common battery, two-party, unlimited service..	15 00 per annum
Common battery, four-party, unlimited service..	12 00 per annum
Magneto (Granton), one-party, unlimited service.	15 00 per annum
Extension sets, in same building and for residence service only, without listing.....	4 80 per annum
Extension bells, same as quoted above	
Listing non-subscriber at the residence of a subscriber, with the consent of the subscriber and company, payable quarterly in advance, and listed	4 00 per annum
Spring jacks: Subscriber must pay installation expense. Rate for three jacks same as for an extension set. Each additional jack.....	1 00 per annum

Rural Telephones:

Unlimited service, outside exchange limits..... 18 00 per annum

Employees Service:

The company does not furnish free service at the homes of employees.

Service may be furnished to employees who hold responsible positions at the head of some department but will be considered as part of the salary earned.

Institutions Not Operated for Profit:

Charitable institutions, public and parochial schools, armory, public library, churches and fraternal societies will be classed as and carry rates and privileges of individual line residences, except as to joint-user privileges.

Rates are quoted for service extending over a period of one year.

Short term contracts will be entered into on the following basis:

Service for three months or less, 50 per cent. of the annual rate.

Service for six months or less, 75 per cent. of the annual rate.

Service for nine months or less, 90 per cent. of the annual rate.

For service over nine months, 100 per cent. of the annual rate.

The above rates are offered with the understanding that the company has facilities to provide the service at the location desired.

Extension sets and bells located outside premises will be furnished for regular service at the above rates with a mileage charge of \$3.00 per annum for each 1/8 mile or fraction thereof, without listing. Extension sets and bells located out of doors or in the open sheds will be charged for at double the regular rates.

Each main, party and rural telephone shall be entitled to one listing in the directory.

The company pays the initial expense of installation. The subscriber must pay the expense of any subsequent change in the location of the telephone instrument.

Subscribers may change from a higher class of service to a lower by paying one-half the balance due on the old contract and signing a new contract for a year's service at the lower rate.

Notice of the removal of the telephone instrument shall be in writing.

Extra Equipment:

Extra long cords for desk sets, repair charges..	\$0 10 per foot
Auxiliary receivers	10 per month
Desk arm or bracket.....	10 per month
Switches, common, for extensions or bells.....	10 per month

Penalties:

A penalty of 25 cents will be collected for failure to pay service bill on or before the sixteenth day of the current month. This penalty shall

apply to each main, party and rural telephone. Service will be discontinued for continued neglect to pay service bill.

A deposit or properly signed guarantee will be required from parties who are not known to the company to be responsible for the payment of service charges.

The company does not hold itself liable to furnish party line service unless the line can be kept full to capacity.

Subscribers who may wish to suspend service for a portion of the year during absence from the community may do so upon payment of one-half the regular net rate for the period of suspension, but in no case shall an allowance be made for a period of less than one month. In all cases the instrument shall remain in place without service and hold its original listing in the directory.

Joint-user service shall include any and all service not specified by the main line listing. One main and one joint-user may be served on one main line unless the main line subscriber should desire the joint-user rate to cover his own additional business.

In order to obtain the rate allowed charitable and public institutions, the applicant must occupy the entire premises and use the service exclusively for the purpose intended. The institution may be required to furnish a written guarantee to cover the above. No joint-user rate will be allowed on this class of service.

Service over trunk lines between central offices is free to subscribers only. If non-subscribers use this service the regular toll fee must be collected.

If non-subscribers use local service a fee of 5 cents should be collected and a fee of 10 cents for rural line service.

Subscribers are responsible for all toll originating at their stations.

Subscriber must pay for all careless breakage of material at his station.

Hearing was held at Madison on February 27, 1914. *W. L. Smith* appeared for the applicant and there was no appearance in opposition.

From the testimony introduced at the hearing and from data submitted by the utility in connection with this case, as well as from the reports and rate schedules filed by the utility, a number of facts which have a bearing upon the case have been obtained.

It appears that telephone service was installed in Neillsville about 1898 by the Badger State Telephone Company. On May 1, 1901, that company was reorganized and business continued under the name of the Badger State Telephone

and Telegraph Company. The present owners acquired possession in 1903. Since then a number of changes have been made in the Neillsville exchange, and it appears that very satisfactory service is being furnished at present. There are a number of rural lines, an exchange in Granton, and about 100 miles of metallic toll lines.

It is understood that Neillsville local subscribers have the use of the Neillsville exchange including connecting rural lines, at the exchange rates, and that a charge of \$6.00 per year additional is made for connection to Granton. Granton subscribers have the option of paying a message rate to Neillsville or paying a flat rate of \$6.00 per year for the service. Under the rates asked for by the utility, subscribers would have free, unlimited service over trunk lines connecting central offices.

A valuation of the physical property was made by the Commission as of January 1, 1914. In this valuation the property was divided among the local, rural, toll, and switching divisions. Following is a summary showing the cost new and the present value of the various groups of the property.

VALUATION OF PROPERTY OF BADGER STATE TELEPHONE AND TELEGRAPH COMPANY.

	LOCAL			RURAL			TOLL			SWITCHING			TOTALS		
	Cost new	Present value	Cost new	Present value	Cost new	Present value	Cost new	Present value	Cost new	Present value	Cost new	Present value	Cost new	Present value	Cost new
A. Land.....	\$834	\$834	\$45	\$45	\$21	\$21							\$900	\$900	
B. Distribution system.....	7,384	4,794	19,220	14,296	9,106	5,207			\$36				35,746	24,324	
C. Buildings and miscellaneous structures.....	170	26	920	137	563	85			17	2			1,670	250	
D. Exchange equipment.....	1,822	1,470	118	86	59	43			41	14			2,040	1,613	
E. General equipment.....	890	528	1,216	528	755	328			22	9			2,883	1,389	
TOTAL.....	\$11,100	\$7,650	\$21,519	\$15,090	\$10,504	\$5,684			\$116	\$52			\$43,239	\$28,476	
Add 12 per cent. (see note below).....	1,332	918	2,582	1,811	1,261	882			14	6			5,189	3,41	
F. Paving.....	\$12,432	\$8,568	\$24,101	\$16,901	\$11,765	\$6,366			\$130	\$58			\$48,428	\$31,893	
TOTAL.....	\$12,432	\$8,568	\$24,101	\$16,901	\$11,765	\$6,366			\$130	\$58			\$48,428	\$31,893	
H. Materials and supplies.....	390	249	918	577	572	362			17	10			1,897	1,198	
TOTAL.....	\$12,822	\$8,817	\$25,019	\$17,478	\$12,337	\$6,728			\$147	\$68			\$50,325	\$33,091	
J. Non-operating.....	943	137	136	108	100	55							1,179	300	
TOTAL.....	\$13,765	\$8,954	\$25,155	\$17,586	\$12,437	\$6,783			\$147	\$68			\$51,504	\$33,391	

Note: Addition of 12 per cent. to cover engineering, superintendence, interest during construction, contingencies, etc.

The division of the local and rural property according to the localities served is shown in the following tables:

	NEILLSVILLE LOCAL		NEILLSVILLE RURAL	
	<i>Cost new</i>	<i>Present value</i>	<i>Cost new</i>	<i>Present value</i>
A. Land	\$834	\$834	\$45	\$45
B. Distribution system	6, 576	4, 288	14, 117	10, 712
C. Buildings and miscellaneous structures	153	24	690	102
D. Exchange equipment	1, 633	1, 404	88	75
E. General equipment	868	517	911	396
TOTAL	\$10, 064	\$7, 067	\$15, 851	\$11, 330
Add 12 per cent. (see note below)	1, 208	848	1, 902	1, 360
TOTAL	\$11, 272	\$7, 915	\$17, 753	\$12, 690
F. Paving				
TOTAL	\$11, 272	\$7, 915	\$17, 753	\$12, 690
H. Materials and supplies	330	214	684	430
TOTAL	\$11, 602	\$8, 129	\$18, 437	\$13, 120
J. Non-operating	943	137	136	108
TOTAL	\$12, 545	\$8, 266	\$18, 573	\$13, 228

Note: Addition of 12 per cent. to cover engineering, superintendence, interest during construction, contingencies, etc.

	GRANTON LOCAL		GRANTON RURAL	
	<i>Cost new</i>	<i>Present value</i>	<i>Cost new</i>	<i>Present value</i>
A. Land				
B. Distribution system	\$808	\$506	\$5, 103	\$3, 584
C. Buildings and miscellaneous structures	17	2	230	35
D. Exchange equipment	189	66	30	11
E. General equipment	22	9	305	130
TOTAL	\$1, 036	\$583	\$5, 668	\$3, 760
Add 12 per cent. (see note below)	\$124	\$70	\$680	\$451
TOTAL	\$1, 160	\$653	\$6, 348	\$4, 211
F. Paving				
TOTAL	\$1, 160	\$653	\$6, 348	\$4, 211
H. Materials and supplies	60	35	234	147
TOTAL	\$1, 220	\$688	\$6, 582	\$4, 358
J. Non-operating				
TOTAL	\$1, 220	\$688	\$6, 582	\$4, 358

Note: Addition of 12 per cent. to cover engineering, superintendence, interest during construction, contingencies, etc.

No value has been fixed for certain rights which the company possesses in various villages. These all appear to be rights affecting the toll system, and as the matter of toll rates is not involved in this case, it does not seem necessary to go into any detail regarding the valuation of the various rights involved. The reports of the utility for the year ended June 30, 1913, show the plant value of the Granton exchange as of that date as \$7,292.55, and of the Neillsville exchange as \$29,334.79. As these include the rural property it is clear that the investment as shown by the company's books is not far from the cost new, as shown by the Commission's valuation of the physical property.

Interest at 7 per cent. on the various valuations available, with the exclusion of non-operating property from the Commission's valuation of physical property, is as follows:

Neillsville Exchange:

On present value of \$21,249.....	\$1,487 43
On cost new of \$30,039.....	2,102 73
On book value of \$29,334.79.....	2,053 44

Granton Exchange:

On present value of \$5,046.....	353 22
On cost new of \$7,802.....	546 14
On book value of \$7,292.55.....	510 48

Depreciation based on the cost new of all property except land and non-operating property is as shown below:

Neillsville Exchange:

At 6½ per cent.....	\$1,889 22
At 7 per cent.....	2,034 55

Granton Exchange:

At 6½ per cent.....	507 13
At 7 per cent.....	546 14

From a consideration of all the facts, it appears that a fair allowance for interest and depreciation will be from \$4,000 to \$4,100 for the Neillsville exchange, and from \$1,000 to \$1,050 for the Granton exchange.

The operating expenses, including taxes, but exclusive of any allowance for interest or depreciation, for the year

ended June 30, 1913, were \$5,211.14 for the Neillsville exchange and \$1,952.39 for the Granton exchange. In dividing its operating expenses between toll and exchange systems, the utility has charged central office expenses entirely to exchange systems and has credited the exchanges with a portion of the toll earnings, as would have been done if toll lines were owned by another company. Although the effect of this is to make the local central office expenses appear high, if the proper proportion of toll earnings is credited to the exchange systems, the increased expenses will be offset by increased earnings, and the amount of expense to be borne by the exchange business will not be affected by the accounting practice. In this case it appears that the Granton exchange has been credited with 25 per cent. of Badger State Telephone and Telegraph toll system earnings. At Neillsville 15 per cent. of the utility's toll system earnings are credited to the exchange system, which is the same percentage which is obtained on originating messages from the Wisconsin Telephone Company's toll system.

With interest and depreciation allowances included, the expenses of the Neillsville exchange would be between \$9,211.14 and \$9,311.14 and the expenses of the Granton exchange would be between \$2,952.39 and \$3,002.39.

In this connection it should be noted that the rural property in the Commission's valuation as of January 1, 1914, includes a considerable number of 'phones in addition to those which were connected on July 1, 1913. In estimating revenues, on the basis of number of subscribers connected on July 1, 1913, this should be taken into consideration, in order that interest may not be allowed on an investment supplying a larger number of subscribers than the number considered in estimating the probable revenue.

In order to compute the probable revenue from the proposed rates it is necessary to make certain assumptions as to the number of subscribers using each class of service. The assumptions made in a statement filed by petitioner appear to be reasonable and are used here with some slight

modifications which appear necessary. On the basis of the assumed distribution of subscribers who were connected on June 30, 1913, the probable revenues would be:

Neillsville Exchange:

Business, one-party, 70 at \$30.00.....	\$2,100 00
Business, two-party, 14 at \$24.00.....	336 00
Business extension, 1 at \$6.00.....	6 00
Residence, one-party, 50 at \$18.00.....	900 00
Residence, two-party, 113 at \$15.00.....	1,695 00
Residence, four-party, 50 at \$12.00.....	600 00
Rural, 175 at \$18.00.....	3,150 00
	<hr/>
	\$8,787 00
Connecting lines	280 52
Miscellaneous	42 22
Non-operating	118 75
	<hr/>
	\$9,228 49
Rural tolls, night service — pay station.....	153 25
	<hr/>
	\$9,381 74

Granton Exchange:

Business, 18 at \$24.00.....	\$432 00
Residence, 27 at \$15.00.....	405 00
Rural, 99 at \$18.00.....	1,782 00
	<hr/>
	\$2,619 00
Connecting lines	452 84
Miscellaneous	10 00
Non-operating	16 50
	<hr/>
	\$3,098 34
Night service	6 50
	<hr/>
	\$3,104 84

Revenues from such items as night service would not exist under the proposed rates, but as they would probably be offset by revenues from miscellaneous appliances, they have been included here at the amounts shown for the last year.

An examination of the facts leads us to the conclusion that the rates for service proposed by petitioner should be

approved with the exception of the rate for rural service. In disapproving this rate we do not mean to hold that the rate is higher than a full analysis of the costs would justify, with possibly some offsetting reductions in local rates. It is a question, however, which is open to argument, whether the rural patrons should be charged directly with the full burden of fixed charges on the investment in rural equipment or whether part of these charges should be borne by the classes of local subscribers who are reached by these rural lines. In this case, too, it must be noted that subscribers on rural lines have heretofore been paying only \$12.00 per year and that an increase to \$18.00 per year may affect both subscribers and utility seriously. We are aware that the utility has a relatively heavy investment in rural equipment, and that under the new rates subscribers will be able to reach both Neillsville and Granton subscribers at the exchange rate, but a full consideration of all the facts leads us to conclude that rates for rural service should be placed at \$16.00 per year.

In approving the other rates asked for by petitioner, we wish to call attention to the fact that all subscribers will be given unlimited service over both exchanges, for which they must now pay \$6.00 per year in addition to regular rates. Also free night service is to be given, so that the proposed increases are to be accomplished with decided increases in the service rendered. All lines are to be metallic, and it is understood that a harmonic ringing system is to be installed.

RULES.

The rules proposed by the company appear to be reasonable, in general, but there are one or two of them which should be modified.

1. The provision with regard to penalties will be modified because of the change in rural rates from \$18.00 per year to \$16.00, and to reduce the penalty slightly for all subscribers.

2. The provision that the company does not hold itself liable to furnish party line service unless the line can be

kept full to capacity should be rescinded, and the company should hold itself in readiness to furnish party line service within its exchange limits, to all who contract for that service.

3. We believe that the provision for charging non-subscribers 5 cents per call for local service and 10 cents per call for rural service should be discontinued, except for calls from pay stations. In some cases such charges are proper, but with a well developed telephone business conducted at rates which will yield a reasonable return, the enforcement of such a charge should probably be discontinued, as it will be an inconvenience to subscribers.

Aside from these three provisions, the rules proposed by the utility appear to be reasonable.

It is, therefore, ordered, That the applicant in this case, the Badger State Telephone and Telegraph Company, be and the same is, hereby authorized to discontinue its present schedule of rates for exchange service and to substitute therefor the schedule of rates asked for in this application, except that the rate for rural service shall be \$16.00 per year if paid in advance during the first month of the quarter. Where payments for rural service are not so made the rate shall be \$18.00 per year.

The rates for local service shall apply when payments are made on or before the fifteenth of the month for which service is rendered. There shall be a penalty of 15 cents per month for delinquent payments for local service.

The proposed rules of the applicant requiring payments from non-subscribers are disapproved, except as they apply to service rendered at pay stations and to service over trunk lines between exchanges. The proposed rule providing that the utility need not furnish party line service unless lines can be kept full to capacity is disapproved.

The rates as authorized shall apply only on full metallic service and may be put in effect for such service for the next period succeeding the date of this order for which bills are rendered.

The utility shall fully inform all subscribers of the changes in rates and in the extent of service to which they are entitled.

Dated at Madison, Wisconsin, this twenty-ninth day of April, 1914.

In re APPLICATION OF THE ETTRICK TELEPHONE COMPANY
FOR AUTHORITY TO INCREASE RATES.

Decided April 29, 1914.

**Increase in Rates Granted—Uniform Rates for Stockholders and
Non-stockholders.**

OPINION AND DECISION.

Application in this matter was filed with the Commission on March 26, 1914. Applicant is a public utility operating a telephone system in and around Ettrick, Wisconsin. The present rates are:

To stockholders, \$5.00 per year if paid during the first quarter.

To renters, \$6.00 per year.

Applicant asks for authority to substitute for this schedule the following schedule:

To shareholders, \$7.00 per year.

To renters, \$8.00 per year.

All rentals paid before April 1 of each year to be allowed a \$1.00 discount.

Hearing was set for April 21, 1914, but no appearances were entered.

In this case there is no question as to the inadequacy of the present rates, if the utility is to furnish a reasonable degree of service, and no objection can be made to the proposed rates on the ground of reasonableness of the total revenue which will be derived.

The law, however, prohibits a utility from charging a different rate to stockholders than is charged to non-stockholders or renters. It will be necessary, therefore, to so amend the schedule as to eliminate this illegal feature.

It is, therefore, ordered, That the applicant, the Ettrick Telephone Company, be, and the same hereby is, authorized to discontinue its present schedule and to substitute therefor the following schedule, applicable to stockholders and non-stockholders alike:

Seven dollars per year per telephone if paid during the first quarter of the year for which payment is due.

One dollar per year as a penalty when not paid during the first quarter.

This rate and the penalty must be applied strictly and impartially in order to avoid illegal discrimination.

Dated at Madison, Wisconsin, this twenty-ninth day of April, 1914.

CURTISS AND WITHEE TELEPHONE COMPANY *v.* OWEN TELEPHONE COMPANY.

Decided April 29, 1914.

Compulsory Physical Connection and Interchange of Service—Switching Fees.

By its previous order * in this case the Commission had directed the Owen Telephone Company to re-establish physical connection between its lines and those of the petitioner, and had further ordered that service be interchanged between the two companies upon the terms which prevailed prior to the disconnection of the lines, namely, a flat rate of 25 cents per month or a message rate of 10 cents per call, until the terms for such interchange of service should be fixed by the Commission.

Cost of Service—Traffic Analysis—Valuation of Property.

Before prescribing the switching charges, the Commission proceeded to find the actual cost to the respondent of furnishing switching service to the petitioner, and for this purpose made a traffic study of all calls going through the exchange of the respondent, in order that a proper basis for the apportionment of the operators' salaries to the service required by the petitioner could be arrived at, and also made a valuation of that part of the respondent's poles, wires and switchboard used by the petitioner, for the purpose of determining what return the respondent should have on his investment.

The Commission found that the cost of switching the petitioner's line was \$16.81 per year.

* Printed in Commission Leaflet No. 26, at page 1121.—Ed.

Revenue from Interchange of Service.

The Commission further found that the rates under the existing contract between the parties furnished approximately sufficient revenue to cover the expenses of operation of this line, but that the contract was not fair to the patrons of the line.

The Commission allowed the old flat rate of 25 cents per month, all of which was to be received by the respondent, to remain in force, but substituted for the former message charge of 10 cents, of which the respondent received $3\frac{1}{2}$ cents and the petitioner $6\frac{1}{2}$ cents, a message charge of 5 cents, 3 cents of which was to be received by the respondent and the remainder by the petitioner.

Minimum Rate.

Held: That in case the total revenue received from the petitioner's line for any one year amounts to less than \$1.00 per telephone connected with the petitioner's line, the difference between the two amounts shall be paid by the petitioner to the respondent.

Penalty For Delayed Payment.

Held: That all bills for switching service shall be paid by the petitioner within one month from the date due or be subject to a penalty of 10 per cent.

Long Distance Calls.

Held: That in all cases the same charges shall be made for long distance service through respondent's exchange either to or from petitioner's subscribers as is made for this service to or from respondent's subscribers.*

SUPPLEMENTAL OPINION AND DECISION.

This decision is supplementary to a decision† in the above matter under date of January 5, 1914, in which the respondent, the Owen Telephone Company, was ordered to make reconnection of the line in question until such time as the Commission could make further investigation of the matter, to the end that a proper basis of settlement be determined. The following is an extract from the previous decision setting forth various points brought out in the petition and in the testimony given at the hearing held on the matter at the office of the Commission on October 13, 1913.

* Editor's headnote.

† Printed in Commission Leaflet No. 6, at page 1121.—Ed.

"The petition in this matter was filed September 2, 1913. The petition sets forth that the petitioner is supplying telephone service in and around the village of Curtiss, and that the Owen Telephone Company is engaged in the telephone business at Owen, that a number of years ago petitioner had telephone lines extended into the village of Owen, that when the Owen Telephone Company was incorporated, and furnished local service and connection with long distance lines, the Curtiss and Withee Telephone Company and the Owen Telephone Company entered into an agreement, the terms of which are set forth in some detail in the petition and in other portions of those proceedings, but of which the essential parts, for the purpose of this case were: That the Owen Telephone Company should take over all the property of petitioner within the village of Owen, that the Owen Telephone Company should furnish connection to petitioner by means of which petitioner's patrons could reach any 'phone upon the Owen Telephone Company's system and also obtain long distance service, that petitioner's patrons should choose one of two methods of paying for this service, these methods being a flat rate of 25 cents per month or a message rate of 10 cents per message, aside from regular long distance tolls. In the case of subscribers who chose to pay 25 cents per month, the Owen Telephone Company received the entire amount, but, of the ten cent message fees, the Owen Telephone Company paid two-thirds to petitioner. For long distance service petitioner received nothing for outgoing messages, but for the use of its lines for incoming messages, it received 6½ cents per message.

"The petition also shows that on or about July 16, 1913, the Owen Telephone Company notified the petitioner that thereafter a charge of 25 cents per month for switching service would be demanded by it for each of petitioner's subscribers and that the message rate would be discontinued, that if this demand were not complied with within 30 days, the connection between the lines of the two companies would be cut, that petitioner refused to comply with this demand and that the Owen Telephone Company, on or about August 18, 1913, severed the connection.

"Petitioner therefore asks for an order requiring the Owen Telephone Company to restore the connection and service between the lines of the parties to this case, and fixing the terms for such connection and service."

The appearances in this case were: *A. J. Dillett* for the petitioner, and *John Moran* for the respondent.

As previously stated, the respondent was ordered to reconnect the petitioner's line to the Owen switchboard under the terms of the contract in force at the time of the disconnection, this contract to remain in force until such time as the Commission had opportunity to make a more thorough investigation of the matter. As a result of this investiga-

tion, which has now been made, and through various parts of the testimony in the case the following additional facts have been established.

The Owen Telephone Company operates a telephone exchange in the village of Owen and from this exchange serves the following patrons: 72 in the village of Owen; 54 in the village of Withee; 86 rural subscribers connected to its own lines; 36 rural subscribers on lines owned by other companies. The respondent also has long distance connections with both the Badger Telephone Company and the Wisconsin Telephone Company. The "McClure" or "common return" system is used for the village subscribers, while the rural lines are all grounded. The petitioner in this case is a mutual company, the stockholders of which are principally farmers who have organized their company, put up their own line, and through the contract previously outlined have obtained connection with the respondent's exchange. The petitioner owns and operates but the one line, on which there are 22 subscribers. This line extends east from Owen to the village of Curtiss, in which village a few business 'phones are connected.

From the testimony in the case and through subsequent statements it has been shown that under the contract in force before the disconnection of the line was made, the total revenue to the respondent from the petitioner was approximately \$21.00 for the year ending August 1, 1913, and that the total gross revenue which the respondent would receive under the proposed flat rate switching charge of \$3.00 per 'phone per year for every 'phone on the line would be approximately \$66.00 per year. One of the principal items to be determined, therefore, was the actual cost to the respondent of furnishing the desired service to the petitioner. To obtain this cost, first, a traffic study was made of all calls going through the exchange of the respondent in order that a proper basis for apportionment of the operators' salaries to the service required by the petitioner could be arrived at; second, a valuation was made of that portion of the respondent's poles, wire

and switchboard that is used by the petitioner, for the purpose of determining what return the respondent should have from this investment.

TRAFFIC STUDY.

A twenty-four hour traffic study was made on March 26, 1914, at the Owen exchange, in which a record was made of all numbers calling and called during the twenty-four hours. Record was further kept of all "ringback" or "reverse ringing" calls made on each line during the time that the traffic study was being taken in order that some light might be thrown upon the contention of the respondent that a considerable part of the operator's time was taken up with the supervision of the ringback calls upon the petitioner's line. The various steps taken in the compiling of this traffic study have been very similar to those taken in the compilation of the study at Lancaster and Potosi, details of which appear in the decision *In re Application of Farmers' Telephone Company of Beetown for Authority to Increase Its Rates and for Other Relief*,* 1914, 13 W. R. C. R. 566. Only the summary of the study therefore will be given here, which is as follows:

* Printed in Commission Leaflet No. 27, at page 168.—Ed.

SUMMARY OF TRAFFIC STUDY — OWEN TELEPHONE COMPANY.
March 26, 1914.

Class of service number	Designation of Classes of Service	Total per cent. of oper- ator's time to each class of service	Total tele- phones to each class of service	Per cent. of oper- ator's time per tele- phone to each class of service	Total lines to each class of service	Per cent. of oper- ator's time per line to each class of service
1.	Owen — local	31.36	72	.44	64	.50
2.	Withee — local	12.75	54	.24	21	.61
3.	Owen Telephone Company — rural	9.9	86	.115	8	1.24
4.	Foreign rural (Thorp & Tis- dale Line).....	1.13	14	.08	1	1.13
5.	Curtiss and Withee Telephone Company	1.09	22	.05	1	1.09
6.	Badger Telephone Company, toll lines	1.65	....	.....	1	1.65
7.	Wisconsin Telephone Com- pany, toll lines.....	30.02	....	.....	2	15.01
8.	Operator	12.10	....	.....	....	.....
9.	Ringback	100.00	....	.....	....	.....
Total		100.00	....	.....	....	.....

NOTE.— The per cent. of operator's time devoted to the "ringback" or "reverse ringing" calls (No. 9 Class of Service) has been charged directly to the class of service originating such calls, hence does not appear separately in the above table. These calls in this case have been weighted at one-half of a local to local call.

The above summary shows that for the day upon which this study was made the per cent. of operator's time devoted to the calls of the petitioner's line was 1.09 per cent.

In order to have further data upon which to base judgment the respondent was requested by the Commission to keep a record of all calls over the petitioner's line, both the ringback calls and those going through the central office, for the two days, April 9 and 10, 1914. The result of this record indicates that the per cent. of operator's time given to this line is probably somewhat higher than is shown by the traffic study made by the Commission.

From all the data at hand it would seem fair to allow 1.75 per cent. to cover this item, and this part of the operator's yearly salary will be considered as an expense chargeable to the petitioner's line.

VALUATION OF PHYSICAL PROPERTY.

A small amount of the respondent's physical property is used by the petitioner. A reasonable return upon the value of this property and the cost of operation and maintenance of same will be allowed the respondent. The apportioned value of this property is as follows:

ESTIMATE OF APPORTIONED VALUE OF OWEN TELEPHONE COMPANY PROPERTY USED BY THE CURTISS AND WITHEE TELEPHONE COMPANY.

Item	Unit	Quantity	Unit price	Cost of re-pro-duction	Scrap cond. value per cent.	Present value	Per cent. to Curtiss & Withee Tel. Co.	Cost of re-pro-duction	Present value
40'-7" cedar poles (stopped)	ea.	3	12.25	37	61	23	3.0	1.11	.69
30'-6" cedar poles	ea.	2	4.93	10	61	6	8.0	.80	.48
25'-6" cedar poles	ea.	10	3.11	31	61	19	5.0	1.55	.95
10 pin cross-arms	ea.	29	1.07	29	47	14	4.0	1.16	.56
6 pin cross-arms	ea.	1	.72	1	47	.....	14.0	.14	.....
Anchor	ea.	2	4.00	8	61	5	8.0	.64	.40
No. 12 iron wire	mi.	.25	12.60	3	61	2	100.0	3.00	2.00
50 pair No. 229 ga L. C. Cable	ft.	.35	.18	6	90	5	2.0	.12	.10
50 pair protected terminal	ea.	1	34.63	35	90	32	2.0	.70	.64
Western Electric No. 1005 manual switch-board, 102 drops installed	ea.	1	306.00	306	34	104	1.0	3.06	1.04
TOTAL								12.28	6.86
Add 12 per cent. (see note)								1.47	.82
TOTAL								13.75	7.68

Note: Add 12 per cent. to cover engineering, superintendence, interest during construction, contingencies, etc.

EXPENSE CHARGEABLE TO SWITCHING OF CURTISS AND WITHEE TELEPHONE COMPANY'S LINE.

Total operating labor — \$672.	
1.75 per cent. of \$672.....	\$11 76
Central office operation and maintenance:	
One line at 50 cents per line.....	50
Wire plant operation and maintenance:	
¼ mile at \$12.00 per mile.....	3 00
Interest at 7 per cent. on \$8.50.....	59
Depreciation at 7 per cent. on \$13.75.....	96
TOTAL EXPENSE	\$16 81

The cost of keeping a record of message rate calls is included here, being provided for by the weighting factor applied to these calls.

NOTE.— It would seem that \$8.50 is a fair value of the property upon which the respondent should be allowed a return.

REVENUE FROM LINE.

As has been previously stated, the total return from the petitioner's line for the year ending August 1, 1913, was approximately \$21.00. During this year, according to a statement submitted by the respondent, there was a total of \$14.00 collected from the flat rate charge of \$3.00 per telephone per year and \$7.00 from toll charges. Taking all of the facts into consideration it would seem that the respondent has been receiving under the existing contract approximately sufficient revenue from this line to cover the expense of its operation.

The next step is to look into the merits of the contract between the two companies under which they are at present operating. The essential features of this contract, so far as revenues are concerned, are as follows: the petitioner's patrons have the option of paying to the respondent \$3.00 per year as a flat rate switching charge which entitled them to free in and out calls through the respondent's exchange, all of which revenue is retained by the respondent; or, they may pay for each call through the respondent's exchange at 10 cents per call, the revenue from each call in this case being divided $3\frac{1}{3}$ cents to the

respondent and $6\frac{2}{3}$ cents to the petitioner. All calls from the respondent's subscribers to the petitioner's subscribers are free.

Such a schedule does not seem to be entirely fair to the various patrons of the petitioner's line. The exaction by the petitioner of a $6\frac{2}{3}$ cents charge on each call seems somewhat exorbitant for the service rendered by the petitioner to its patrons. It is believed that a five cent message charge, divided 3 cents to the respondent and 2 cents to the petitioner, will be a more proper charge, and will work to the better interests of the patrons using the message rate service. In its other aspects the present arrangement, with slight modification, as indicated in the following order, seems to meet the needs of the situation.

Now, therefore, it is ordered, That the Owen Telephone Company, respondent in this case, continue to furnish telephone service to the Curtiss and Withee Telephone Company, petitioner on the following basis:

1. No charge shall be made for calls from subscribers connected to the respondent's exchange at Owen to the petitioner's subscribers. The cost of this service is considered to be included in the regular rates paid by those subscribers.

2. The petitioner's subscribers may have the option (a) of paying to the respondent a flat rate of \$3.00 per year per telephone and be entitled to unlimited service through the respondent's exchange to subscribers connected directly with that exchange; or (b) of paying a five cent toll charge for each call sent through respondent's exchange to subscribers connected directly with that exchange. The division of the toll charge between the two companies shall be 3 cents to the respondent and 2 cents to the petitioner.

3. The petitioner's patrons shall elect the class of service desired for periods of not less than six months.

4. Statements covering the amounts due the respondent for the flat rate switching service and tolls shall be submitted by the respondent to the petitioner at regular intervals, preferably every quarter year, and shall be paid by

the petitioner within one month from date due or be subject to a penalty of 10 per cent. of the unpaid portion of the bill. The statement of the respondent covering the amount of toll charges shall be itemized, showing for each call the name of party making call, name of party called, date of call and whatever additional information is necessary to make the charge clear.

5. Charges for long distance service through respondent's exchange either to or from petitioner's subscribers, shall in all cases be the same as the charges made for this service to or from respondent's subscribers.

6. In case the total revenue received by respondent from petitioner's line for any one year amounts to less than \$1.00 per telephone connected to petitioner's line, the difference between the two amounts shall be paid by the petitioner to the respondent.

Dated at Madison, Wisconsin, this twenty-ninth day of April, 1914.

IN THE MATTER OF THE APPLICATION OF THE RIPON UNITED
TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS
RATES.

Decided April 30, 1914.

**Increase in Rates upon Installation of Common Battery System—Issuance
of Stock—Valuation of Property—Allowance for Depreciation.**

This was an application by the Ripon United Telephone Company for authority to issue additional capital stock to provide for the increased capitalization necessary for the installation of a common battery system in lieu of the existing magneto system, for permission to increase rates and to abolish certain existing charges. It appeared that the value of the company's plant, as previously found by the Commission, was \$25,800, that additions properly chargeable to capital in the amount of \$3,986.21 had been made, that the estimated cost of improvements would be about \$15,625, of which about \$5,000 would be properly a replacement charge, leaving \$10,625 to be provided for by the sale of additional capital stock. The Commission accordingly found that the company should be allowed to earn a fair return on a valuation of approximately \$40,500.

It further appeared that the annual gross income for the previous year, after deducting ordinary operating expenses, taxes and an allowance of

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7 per cent. for depreciation, was \$3,195.70, of which \$2,608 was paid out in dividends and \$587.70 carried to surplus. The Commission found that by the abolition of certain special charges for rural service, the income would be reduced by approximately \$600 per year, in which case the company would have an amount insufficient to provide completely for operating expenses, depreciation, taxes and interest even on its present investment. The Commission held that some increase in rates should be allowed, but that the required revenue was not as great as that which would result from the rates proposed by the company. The Commission accordingly prescribed a schedule of rates which, in its opinion, would be adequate to pay all operating expenses, fixed charges, return on investment, and leave a slight surplus, but provided that this schedule of rates should be effective only upon the complete substitution by the company of a common battery system for the magneto system.

Abolition of Certain Existing Charges for Rural Service.

It appeared that the company furnished its rural subscribers communication with the city subscribers without additional charge, whereas it imposed a charge of 10 cents per message for communication between a city telephone and a rural telephone, or in lieu of this message charge, caused its city subscribers to pay a flat rate of 25 cents a mile for unlimited service to the rural lines.

Held: That this message and flat rate charge to city subscribers for the use of rural lines should be abolished.*

OPINION AND DECISION.

This application was filed on the twelfth of March, 1914. It states that the petitioner is a public service corporation organized under the laws of the State and engaged in the business of furnishing telephone service from its exchange in Ripon to the residents of that city and of the surrounding territory within an area of seven miles radius.

The company is the successor of the Ripon Telephone Company and of the Ripon Rural Telephone Company, having purchased the property of those concerns in June, 1912. At that time a valuation of \$25,800 was placed on the property by this Commission.

The petition states that the system of the company is what is known as a magneto system, and a considerable portion of the plant and equipment within the city of Ripon

* Editor's headnote.

and almost the entire rural system is what is known as "metallic." It is the plan of the management to change the city system over to the common battery system. To do this will require the investment of considerable additional capital, and the company asks for the authority to issue additional capital stock to provide for the increased capital and for permission to increase their rates 50 cents on business 'phones and 25 cents on residence 'phones, and to abolish certain existing charges for service from the city to rural subscribers. Hearing was held at the office of the Railroad Commission on April 6, 1914. *S. M. Pedrick*, secretary, and *E. W. Barnes*, manager of the company, appeared for the applicant. No appearances were made for the opposition.

The local rates of the company on file with the Commission are as follows:

Single line business 'phone	8 00 per month
2-party line business 'phone.....	1 75 per month
3-or more-party line business 'phone.....	1 50 per month
Extension set business 'phone.....	1 00 per month
Single line residence 'phone.....	1 50 per month
2-party line residence 'phone.....	1 25 per month
3-or more-party residence 'phone.....	1 00 per month
Extension	50 per month

In addition to these rates the company imposes a charge of 10 cents per message for communication from the city to any of its rural 'phones, or, in lieu of this message charge, city subscribers may pay a flat rate of 25 cents per month for unlimited service to the rural lines. This additional charge for service from the city to the rural lines the company proposes to abolish if the increase in rates asked for is allowed. The company's report shows it to have approximately three hundred rural patrons. No additional charge is made to these patrons, it seems, for communications to city subscribers. If the rural calls to the city subscribers are to be regarded as exchange business generally, it is only fair to regard the converse of these calls, *i. e.*, from city subscribers to the rural lines, as

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part of the general exchange business also, to be paid for at regular exchange rates. It is considered, therefore, that this message and flat rate charge to city subscribers for use of the rural lines of the company should be abolished, as suggested by the applicant.

It was testified at the hearing that the company had had an engineer of the Wisconsin Telephone Company make an estimate of the cost of the desired improvements. This engineer made a survey of the situation and arrived at the conclusion that the cost of the necessary equipment to place the city subscribers upon a common battery system and the rural subscribers on a magneto system would be about \$16,125. This figure, the manager of the company believes, can be reduced by about \$4,000, leaving the total cost of equipment at about \$12,125. It is estimated that the building proposed to be erected to accommodate the central office will cost \$3,500. Thus the entire cost of the improvements is estimated by the management to be about \$15,625, the salvage from the equipment now in use being expected to be sufficient to take care of the expense of making the change. Some portion of the new equipment being in the nature of replacement of equipment now in use, a part of the cost will properly be credited to depreciation and paid for out of the depreciation reserve fund. The central office equipment now in use, of a value of about \$1,500, and wire plant and other equipment of an estimated value of about \$3,500, are thought to be correctly regarded as depreciation. Deducting this amount from the total cost of the improvements leaves \$10,625 to be provided for by the sale of additional capital stock.

The value of the property, including a reasonable allowance for cost of developing the business, was placed at \$25,800 in July, 1913. The company was permitted to issue stock on the basis of this value. While the value placed upon a property for purposes of purchase or the issuance of stock may not be identical with the value that should be allowed for the purpose of computing a fair value for rate making purposes, it appears that the amount al-

lowed by the Commission in this instance may fairly be taken as the value as of that date. Since then the company has made some improvements that should be included in a valuation as of the present time. Additions to the wire plant have been made at a cost of \$1,106.92. New 'phones have been placed, which, including wiring and installing, have cost approximately \$1,203.26, and land has been purchased as a site for the proposed central office building at a cost of \$1,263.03. These additions, together with some minor amounts, bring the value up to \$29,786.21 at the date of the last report. This together with the cost of the estimated improvements will make the value upon which the company would be allowed to earn, approximately \$40,500.

An examination of the income account as reported to this Commission in June, 1913, shows the total operating revenues for the fiscal year last past to have been \$12,595.45, and the ordinary operating expenses to have been \$7,187.47. Inspecting the various items of operating expense with the light of what data there is on hand, they appear to be fairly normal. Depreciation was charged off by the company at a rate of 7 per cent., which is probably slightly higher than was entirely necessary. Deducting depreciation and taxes and adding the non-operating revenues, the gross income from the year's operation is found to be \$3,195.70, of which \$2,608 was paid out in dividends and \$587.70 passed to surplus. There remains to be seen what increases there must be in the earnings of the company if it is to continue to meet operating expenses, pay taxes and allow adequately for depreciation and pay a fair return upon the investment.

It is stated by the company that 130 subscribers in the city are paying the flat rate of 25 cents per month for service to the rural lines. The income from these amounts to \$390 per year. The income from those subscribers who pay the 10 cent toll charge for occasional service to the rural lines and from similar tolls from the Wisconsin Telephone lines averages \$213.72 per year. The abolition of this special charge for rural service will therefore entail

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a reduction in income of approximately \$600 per year. Applying this reduction to the income reported for the last fiscal year we find the total operating revenues fall to \$11,995.45, an amount insufficient to provide completely for operating expenses, depreciation, taxes, and interest even on the investment the company has at present. *A fortiori* would it be insufficient to care for the same allowances on an increased investment such as the improved service will require. Some advance in rates is therefore necessary if the city is to be given the advantage of the improved service suggested. But it does not appear that the required increase in revenues is as great as that which would result from the increased rates proposed by the company.

We cannot foretell what effect a change in the schedule of rates of the company will have upon the class of service that the subscribers elect to take. It is probable, however, that there will be some changes from single party to two- or more-party service following a readjustment of the schedule. We do not anticipate that the number of changes will be so great as to seriously disturb the accuracy of the estimates we have made, especially since the data that we have at hand as to the number of installations is that submitted by the company in its last report, and does not take into consideration the additional installations made since that time. The following table shows the rates that are considered sufficient to meet the requirements of the proposed improved service.

<i>Business:</i>	<i>Rate</i>	<i>Increase</i>	<i>Amount</i>
Single party	\$2 50	\$0 50	\$156
2-party	2 00	25	15
3- or more-party.....	1 75	25	261
Extension set.....	1 00	.....	.....
<i>Residence:</i>			
Single party	1 75	25	51
2-party	1 50	25	33
3- or more-party.....	1 15	15	621
Extension set	50	.....	.....
TOTAL ADDITIONAL REVENUE.....			\$1,137

Deducting the revenue at present derived from the class of service previously spoken of which is to be abolished, and adding the revenue to be derived from the increases in rates herein proposed, the total operating revenues of the company would amount to \$13,132.45. The ordinary operating expenses for the past fiscal year, plus an allowance for depreciation at $6\frac{1}{2}$ per cent. on the value of the property at present in use and on the estimated cost of the improvements proposed, and plus taxes as already paid for the year 1914, would amount to \$10,196.88. A balance would thus be left amounting to \$2,935.57, which, adding the non-operating revenues, gives an amount available for a return upon investment of \$3,101.89. With interest at 7 per cent. this appears to be adequate to pay interest charges and have a slight surplus to care for unforeseen contingencies.

The preceding discussion is based upon the assumption that the system of the Ripon United Telephone Company is to be improved in the manner outlined in the first portion of this decision.

It is, therefore, ordered, That the Ripon United Telephone Company abolish the charge now made to city subscribers of 25 cents flat rate for service to rural lines or 10 cents toll rate to city subscribers for service from the city to rural lines.

That, upon the completion of the improvements of the system owned by the said company by the substitution of the common battery system for the magneto system now in use in the city of Ripon, and of complete metallic lines throughout, the company may discontinue its present schedule of rates and substitute therefore the following schedule:

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Business rates:

Single party line	\$2 50
2-party line	2 00
3- or more-party line.....	1 75
Extension set	1 00

Residence rates:

Single party line	1 75
2-party line	1 50
3- or more party-line.....	1 15
Extension set	50

These rates as authorized shall not be put in effect until improvements outlined have been fully made.

Dated at Madison, Wisconsin, this thirtieth day of April, 1914.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE LINE
OF THE WISCONSIN TELEPHONE COMPANY IN SECTIONS 7,
17, AND 18 IN THE TOWN OF ROCK, ROCK COUNTY, WIS-
CONSIN.

Decided May 6, 1914.

**Public Convenience and Necessity—Invasion of Occupied Field—Duplica-
tion of Facilities—Extension of Lines into Unoccupied Territory.**

The Wisconsin Telephone Company, having filed notice of its intention to extend its telephone lines in the town of Rock in order to reach three proposed subscribers, the Rock County Telephone Company, which operated local lines in Rock, filed its objection. It appeared that of the two proposed subscribers who were without telephonic service, one desired the Wisconsin Telephone Company's service, while the other was indifferent as to which service was installed. The third proposed subscriber had the service of the Rock County company and desired the service of the Wisconsin company mainly because one of his farms had the service of the latter company. It further appeared that the Rock County company had constructed its line about two years previous for the purpose of serving this subscriber, constructing for his use about one-quarter of a mile of pole line which would be left without any subscribers should this subscriber be transferred to the Wisconsin line.

Held: That in the case of the proposed subscribers who had no present telephonic service, there was no controlling necessity demanding the service of one company rather than that of the other;

That the Commission cannot find as required by the statute that public convenience and necessity do not require the extension proposed by the Wisconsin company, that in the absence of such finding the company has the right to make the extension;

That so far as public convenience and necessity are concerned, it is not the law that the older or larger company should be permitted to do all the extending and that the new company should be confined to its existing line;

That the Commission must consider the situation as it existed when the anti-duplication law became effective, and when the situation is thus considered, it is usually difficult to give either company priority when both are about equally near unoccupied territory;

That in the case of the subscriber who already had the objector's service, the extension should not be allowed as otherwise there would result the very kind of destructive competition which the statute was intended to prevent;

That the proper procedure would be for this proposed subscriber to invoke the physical connection law;

That public convenience and necessity did not require the extension of the applicant's line for the purpose of serving the third proposed subscriber.*

OPINION AND DECISION.

Notice of the proposed extension involved in this case was filed with this Commission by the Wisconsin Telephone Company April 17, 1914. Upon filing of objection by the Rock County Telephone Company the matter was set for hearing at Janesville. At the hearing which was held May 1, 1914, the Wisconsin Telephone Company was represented by *J. F. Krizek* and the Rock County Telephone Company by *Ruger and Ruger*.

The Wisconsin Telephone Company proposes a lateral extension from its existing line which now runs on an east and west highway between the sections 5 and 8 in the town of Rock. The proposed extension would run south on the line between sections 7 and 8 and between sections 17 and 18 to reach three proposed subscribers. Of these three persons, two reside along the proposed line in section 7, and the third, Mr. Finley, is at the end of the proposed line in section 18. A fourth resident, who has not decided to

* Editor's headnote.

take telephone service but is considered by the Wisconsin Telephone Company to be a prospect, lives across the road from Mr. Finley and a few rods north. The two proposed subscribers in section 7 now have no telephone service; the one farthest to the north desires the Wisconsin Telephone service; the other one is indifferent as to which service is installed. Mr. Finley, the proposed subscriber farthest to the south, now has the service of the Rock County Telephone Company, and it was stated at the hearing that his main reason for desiring the Wisconsin Telephone Company's service was that he owned another farm at about the center of section 7, at which he had the service of the Wisconsin company. It was testified that the Rock County Telephone Company built its line about two years ago to Mr. Finley's residence, constructing for his use about one-quarter of a mile of pole line which would be left without any subscribers at all if Mr. Finley were to be transferred to the Wisconsin line. Mr. Finley did not appear at the hearing and some of the testimony tended to show that he was satisfied with the Rock County service and had no great desire for a change.

The two proposed subscribers north of Mr. Finley's residence are in territory served by neither company. There is little difference in the distance either company would have to build its line in order to reach these persons. The northerly one is a little closer to the Wisconsin line, while the southern one seems a little nearer to the end of the Rock County line at Mr. Finley's residence. Under such circumstances as these, there does not seem to be any controlling public necessity demanding the service of one company rather than that of the other. The thing that the statute requires of this Commission is a definite finding that public convenience and necessity do not require the extension proposed by the Wisconsin Telephone Company, and if such finding is not made, the company has the right to make the extension. Such a finding cannot be made in this case as to the more northerly residences, since there is nothing in the situation to indicate that from the point of

view of the public the service of the Wisconsin Telephone Company is not needed at the points in question.

Counsel for the Rock County Telephone Company in his brief disagrees with the position just stated and previous expressions in other cases by this Commission in regard to entrance of companies into unoccupied territory. It is his position, as we understand it, that where one company has been long established in a given town and has a preponderating mileage of line and a number of subscribers in that town, it should be the one to serve that town; and that if another company happened to be operating within the town when the anti-duplication law became effective, it should be permitted to keep only such subscribers as it had and it should not be allowed to extend. The legislature, it is true, made the town the unit for jurisdictional purposes, but the question of public convenience and necessity is not one that can ordinarily be determined by the location of town lines. So far as the public convenience and necessity are concerned, it would be impossible to say that the older or larger company should be permitted to do all the extending within a town and the newer company should be confined to its existing lines. This Commission must consider the telephone situation as it existed when the anti-duplication law became effective, and when the situation is thus considered it is usually difficult to give either company priority when both are about equally near to unoccupied territory. The provision in the law for physical connection between telephone companies should afford relief from such inconvenience as may result from close proximity of telephone lines already established in rural districts.

It follows from what has been stated that the Commission will make no finding with respect to the Wisconsin Telephone Company's proposed extension to the first two residences mentioned in the notice, and the company will, therefore, be authorized by the operation of law to proceed with the extension to these points.

The situation is quite different as to the extension to Mr. Finley's residence where the Rock County Telephone

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Company is already giving service, and there is nothing in the record to indicate that the service is not reasonably adequate. The shifting of Mr. Finley from the Rock County to the Wisconsin line would make about one-quarter of a mile of the Rock County pole line useless. The case here is not one of unoccupied territory into which either company may with equal propriety be allowed to enter. The very kind of destructive competition which the law was intended to prevent would result if actual transfer of subscribers from one company to another for such reasons as appear in this case were to be permitted. As we have intimated above the physical connection law can be called into operation to obviate the difficulty caused by Mr. Finley's ownership of two farms on one of which the Wisconsin Telephone Company's instrument is now installed. As a matter of fact there is now pending before this Commission a proceeding having for its object the establishing of physical connection between the Wisconsin Telephone Company and the Rock County Telephone Company at Janesville, and this case will soon be decided. The evidence presented satisfies us that public convenience and necessity do not require the extension to Mr. Finley's residence.

As to the other residence near Mr. Finley, at which there is no certainty that any telephone service at all is desired, it would seem that its close proximity to Mr. Finley's house would make the Rock County line the logical one to be extended, if an extension is to be made. The evidence is very vague, however, as to the needs and intentions of Mr. Mulligan, the occupant of this residence, and therefore for the present the Commission's findings will be to the effect that no extension of the Wisconsin Telephone Company's line south of the southern boundary of sections 7 and 8 of the town of Rock is required by public convenience and necessity.

We, therefore, find and determine, That public convenience and necessity do not require the extension of lines of the Wisconsin Telephone Company in the town of Rock,

Rock County, Wisconsin, in the manner proposed in its notice filed with this Commission April 17, 1914, in so far as such extension is proposed to proceed south of the southern boundary of sections 7 and 8 of said town of Rock.

Dated this sixth day of May, 1914, at the office of the Railroad Commission of Wisconsin, in the Capital, at Madison, Wisconsin.

**E. D. MCGOWAN *v.* ROCK COUNTY TELEPHONE COMPANY AND
WISCONSIN TELEPHONE COMPANY.**

Decided June 2, 1914.

Compulsory Physical Connection.

This was a petition by a resident of Janesville asking that the Wisconsin Telephone Company and the Rock County Telephone Company be required to establish full physical connection between the toll systems of each company, between the exchange systems of each company and between the toll and exchange systems of each company. The Wisconsin Telephone Company resisted the granting of the petition.

It appears that the Rock County Telephone Company was established in opposition to the Wisconsin company and was controlled by local capital. Both companies furnish local and long distance service within the State either entirely over their own lines or over their own lines and those of associated companies. As to toll business, the advantage in number of stations was decidedly with the Wisconsin company, while the Rock County company had a slight advantage locally. The only connection between the two companies was that the Wisconsin company had a Rock County company telephone installed in its office. The Wisconsin company refused to transmit over the lines of the Rock County company messages coming over its own lines for parties who were subscribers of the Rock County company but not of the Wisconsin company, and merely used the Rock County company telephone to notify the party called to go to a Wisconsin company telephone in order to communicate with the party calling. Physical connection was admitted to be mechanically feasible and it appeared that such connection would greatly increase the value of the service to the subscribers of both companies and would facilitate long distance communication and decrease the cost of handling the same.

Constitutionality of Statute.

Held: As to the constitutionality of the statute and the jurisdiction of the Commission, that the Commission had already fully expressed its

views in the case of *Frank Winter v. The La Crosse Telephone Company and Wisconsin Telephone Company*.*

Public Convenience and Necessity.

Held: That public convenience and necessity require the establishment of a connection between the respondents' systems, toll, exchange and rural.

Deprivation of Property—Maintenance of Status Quo—Extra Charge for Service.

Held: That in order that neither company shall suffer irreparable loss by the transfer of subscribers from one company to the other as the result of the establishment of the physical connection, a subscriber of one company desiring to be connected with the exchange of the other for the purpose of either local or toll service must pay to the company of which he is not a patron a small charge for the privilege of the connection.

That this charge shall be adjusted so as to preserve substantially the *status quo* of the two companies.

That no charge other than the cost of service and reasonable compensation shall be made to such subscribers and patrons as have, and could have, only the service of one company because of the statute prohibiting uneconomic competition and duplication.

Prerequisites of Compulsory Connection—Cost of Connection—Place of Connection.

Held: That public convenience and necessity require a physical connection for interchange of both local and long distance business between the exchanges of the Wisconsin Telephone Company and the Rock County Telephone Company in the city of Janesville, that such connection will not result in irreparable injury to the owners or other users of the facilities of said companies, and that it will not result in substantial detriment to the service to be rendered by them.

That the expense of making the physical connection ordered and the subsequent maintenance thereof shall be apportioned equally between the companies.

That the details of making the connection shall be left to the companies, but if no agreement between them can be reached as to the place, manner or method of making the same a further hearing will be granted and a supplemental order made.

An order in accord with the opinion was entered.†

* Printed in Commission Leaflet No. 18, at page 952.—Ed.

† Editor's headnote.

OPINION AND DECISION.

The petitioner is a resident of the city of Janesville, Rock County, Wisconsin. He alleges that in the city of Janesville the Rock County Telephone Company and the Wisconsin Telephone Company, also known as the Bell Telephone Company, each maintain an office and a telephone system, with the usual equipment for the transmission of local and long distance messages, and for all other telephone service and purposes; that each maintain telephone toll lines extending from the city of Janesville to many other cities and other places; that these companies have not made any arrangement for physical connection as provided by law either between their local system or toll lines or both; that they have refused and now refuse to make such physical connection as is provided by Chapter 546 of the Laws of Wisconsin, 1911; that public convenience and necessity require such physical connection, and that no irreparable injury will result therefrom to owners or other users of the equipment of those companies, nor in any substantial detriment to the service to be rendered by them. The petitioner further alleges that he frequently has occasion to use one or the other of the toll lines operated by the two companies; that he is prevented from so doing by reason of their neglect and failure to make such connection as provided by law as aforesaid, and that petitioner frequently has had calls over the toll lines of the two companies, and especially over those of the Wisconsin Telephone Company, but that the operators of the latter company refused to give or transmit to him such message over the local telephone lines of the Rock County Telephone Company. Wherefore petitioner asks that an investigation be made of the matter, as provided by Chapter 546 of the Laws of Wisconsin, 1911, and that if, after investigation, the Commission shall ascertain that public convenience and necessity require such physical connection, that no irreparable injury will result therefrom to the owners or other users of the equipment or facilities of the public utilities

involved, nor in any substantial detriment to the service to be rendered by such owners, or such public utilities, or other users of such equipment or facilities, it order that such use be permitted, and prescribe reasonable conditions and compensations for such joint use, and that such physical connection be made and determine how and within what time such connection shall be made, and by whom the expense thereof shall be borne, and for such other and further order with reference to the matter as by law should be made.

The respondent, the Wisconsin Telephone Company, answering the petition, admits the formal allegations thereof, but objects and protests against the making of any investigation or order therein by the Railroad Commission; alleges that petitioner is without authority, right, or capacity to file or present the foregoing petition; that Chapter 546 of the Laws of 1911, pursuant to which the petition purports to be filed, is in violation of and in conflict with Section 1 of Article IV, Section 2 of Article VII, and Sections 5, 13 and 22 of Article I of the Constitution of Wisconsin, and with Section 10 of Article I, of the Constitution of the United States, and of Section I of the Fourteenth Amendment thereto; that any order entered in the proceedings herein, directing any physical connection, or determining any matter in relation thereto will deny the Wisconsin Telephone Company the equal protection of the laws, the right of trial by jury, will deprive it of its property without the process of law, or the payment of just compensation therefor, and will be subversive of justice, moderation, virtue, and fundamental principles; that, since the Wisconsin Telephone Company's toll lines are operated in conjunction with toll lines engaged in interstate commerce, namely, those owned or controlled by the American Telephone and Telegraph Company, any order, requiring physical connection of respondent company's toll lines with those of the Rock County Telephone Company, will affect and interfere with interstate commerce and thus be a regulation of interstate commerce, in conflict with and violation of

Subsection 3 of Section 8 of Article I of the Constitution of the United States; and that the Railroad Commission of Wisconsin is without jurisdiction, right or authority in the matters herein.

Without waiving its aforesaid objections the respondent, Wisconsin Telephone Company further alleges that the refusal of its operators to transmit to petitioner over the local telephone lines of the Rock County Telephone Company messages coming for him over toll lines of respondent company was and is proper and in accordance with law; denies that if petitioner has occasion to use toll lines of respondent company at city of Janesville he is unable to do so conveniently by reason of the lack of physical connection between the telephone systems of respondent companies; alleges that its toll lines and connections reach and give adequate service to all of the various places served by the Rock County Telephone Company and its toll lines; that the refusal of respondent companies to make such physical connection as is sought by petitioner is proper, and in accordance with law; that public convenience or necessity does not require physical connection between respondent companies at Janesville, Wisconsin, or elsewhere; that any such physical connection cannot be readily made; that it will result in irreparable injury to the owners and other users of the facilities of respondent companies; that it will result in substantial detriment to the service to be furnished by both or either; that it will not extend greatly or otherwise the use of the telephone systems of each or either; that it will not be of great or other advantage to the community or to the subscribers of both or either; that any such physical connection as is sought by petitioner will result in great advantage to the Rock County Telephone Company at serious costs and detriment to the Wisconsin Telephone Company. Wherefore, the respondent, the Wisconsin Telephone Company, prays that the petition be dismissed.

Two hearings were held. The first took place July 2, 1913, at the capitol, in the city of Madison; the second, pur-

suant to adjournment, November 5, 1913, at the city hall, Janesville. *E. D. McGowan* appeared in his own behalf; *Edwin S. Mack* and *J. F. Krizek* appeared for the Wisconsin Telephone Company, and *R. Valentine* for the Rock County Telephone Company.

The objections to the jurisdiction of the Commission based upon the alleged invalidity of the statute involved in these proceedings were also set up in the answer in the case of *Frank Winter* against *La Crosse Telephone Company et al.*,* 11 W. R. C. R. 748. In the *Winter* case, by stipulation of the parties, physical connection of the two exchanges for interchange of strictly local service between the respondent company's subscribers within the city was eliminated. In the instant case the fullest connection authorized by the statute in question is sought. The principles involved in the *Winter* case and in this case seem closely analogous. As the Commission fully expressed its views in the former case as to the proper interpretation of the statute and the fundamental principles underlying the same as regards its administration in general, further comment upon the legal question raised will not be here indulged except in so far as it may be necessary in certain phases of the case presented to advert to the same.

Janesville is given a population of 13,694 by the 1910 census. It is situated on the main line of the Chicago and Northwestern Railway Company and also on a line of the Chicago, Milwaukee and St. Paul Railway Company. It appears that there are two telephone companies serving the public in Janesville, namely, the Rock County Telephone Company, hereinafter referred to as the Rock company, and the Wisconsin Telephone Company, hereinafter referred to as the Bell company. Both of these companies furnish local and long distance service. The former provides long distance service chiefly through its connection with other companies and particularly through its connection with the Badger Telegraph and Telephone Company. The latter operates an independent toll line. However, its

* Printed in Commission Leaflet No. 18, at page 952.—Ed.

bonds and nearly all of its stock are owned by the Rock company. When the bonds become due, which will be about two years hence, this company will be merged with the Rock company. The latter company has at present one toll line which extends between Janesville and Footville for a distance of nine miles.

The toll lines of the Bell company located entirely within the State are:

- Janesville-Lake Geneva
- Janesville-Delavan
- Janesville-Whitewater
- Janesville-Milwaukee
- Janesville-Watertown
- Janesville-Fort Atkinson
- Janesville-Edgerton
- Janesville-Stoughton
- Janesville-Madison
- Janesville-Evansville
- Janesville-Orfordville
- Janesville-Juda
- Janesville-Monroe
- Janesville-Darlington
- Janesville-Shullsburg
- Janesville-Beloit

It also has a line to Rockford, Illinois, and connects with the line of the American Telephone and Telegraph Company.

The Rock Company connects about as follows:

- Janesville to Milton, Milton Junction and Edgerton
- Janesville to Clinton, Darion and Elkhorn
- Janesville to Sharon and Delavan, and points in Illinois

Through connections with independent companies

It also renders toll service as follows:

- Janesville to Beloit and beyond to Illinois points
- Janesville to Brodhead, Monroe, Monticello, Argyle, Belleville and Albany
- Janesville to Evansville and Brooklyn

From an inspection of the list of long distance stations contained in the Rock company's directory for 1913, it appears that the Rock company offered connections to 65 exchanges and stations within the State. From the reports filed with the Commission by the Bell company, it would seem that that company reaches 47 of such exchanges and stations.

The Bell company during the year ending December 31, 1912, reached 297 points within the State of Wisconsin from its Janesville exchange. Of these points 64 were reached by the lines of the Badger Telegraph and Telephone Company which, as has been stated, is associated with the Rock company. The receipts of the Bell company for such duplicate points, for originating toll business for the year mentioned were \$4,704.55, and the receipts for the 233 non-duplicate points were \$5,643.45, making a total of \$10,548 for that year. The total receipts of the Rock company were \$2,618.05 during the year ending May 31, 1912, and \$2,379.05 during the year ending May 31, 1913.

The above figures are not strictly comparable since they are not for the same identical period. However, the comparison is close enough to justify the conclusion that, as to toll business, the advantage is decidedly with the Bell company and doubtless an important inducement to subscribe for the bell 'phone is the long distance toll service. Though, as will be seen, the Bell company has a large number of local subscribers, in this respect it has not had a great disadvantage. Upon the hearing it appeared that the subscribers of the Rock company in and near Janesville were approximately 2,400 while those of the Bell company were 1,774. From the reports filed with the Commission by the two companies the following table has been compiled:

Year ending	INSTALLATION				TOTAL	
	BUSINESS		RESIDENCE		Rock	
	Rock County	Bell	Rock County	Bell	County	Bell
December 31, 1907.....	...	...	.....	.....	1,505	1,149
June 30, 1909.....	368	335	1,340	820	1,708	1,155
June 30, 1910.....	440	366	1,395	835	1,835	1,201
June 30, 1911.....	425	383	1,526	868	1,951	1,251
June 30, 1912.....	435	427	1,557	1,137	1,992	1,564
June 30, 1913.....	431	455	1,571	1,329	2,002	1,784

This includes a small number of extensions. From the foregoing it would seem that the advantage locally of the Rock company as far as subscribers is concerned is not very great and has become somewhat less in the last five or six years. On June 30, 1909, there was a total of 703 business installations by both companies and 2,160 residence installations. Of the former the Bell company had 48 per cent. and of the latter 38 per cent. On June 30, 1913, the Bell company had 51 per cent. of the total business installations and 46 per cent. of the total residence installations. In this connection it must be borne in mind that the Bell company entered the field in Janesville about twenty years earlier than the Rock company. The directors and officers of the latter company are all residents of Janesville. Against the superior advantages the Bell company presumably offers for long distance service, the Rock company opposes, among other things the prestige of a local concern.

From the annual reports filed with the Commission by the Bell company it appears that it has incurred a loss on its Janesville exchange during the last few years. From all of these facts it would seem clear that the competition between the two companies has been very keen as well as unprofitable to both companies.

On January 1, 1913, the Bell company had 315 business telephones and 113 residence telephones installed in places where the Rock company's 'phones were also installed. At that time the Bell company had 75 business and 1,122 residence 'phones installed where the Rock company's 'phones were not in use, and the Rock company had 182 business and 1,305 residence 'phones installed where no Bell company's 'phones were in use. According to the statistics in hand it appears that 572 subscribers had business 'phones on that date, and that of this number 315, or 55 per cent., had both 'phones. On the other hand there were 2,540 subscribers having residence 'phones of which only 113, or 4 per cent. had both 'phones.

In the transaction of its business the Bell company refuses to transmit over the lines of the Rock company messages coming over its own lines for parties who are subscribers of the Rock company but not of the Bell company. The only connection between the two companies is that the Bell company has a Rock company 'phone installed in its office. When a call comes over the Bell lines for a person having a Rock company's 'phone but not a Bell 'phone the Bell company notifies the party over the Rock company's 'phone in its office of the call. It then becomes necessary for the party called to go to a Bell 'phone in order to communicate with the party calling. The petitioner who has the 'phones of both companies in his office, but only the Rock company's 'phone in his residence, testified to a number of occasions when he had been seriously inconvenienced by his inability to communicate from his residence with persons calling him over the Bell company's lines.

As has been seen, 45 per cent. of the business establishments and 96 per cent. of the residences had only the telephone of one of the companies on January 1, 1913. It has also been noted that the companies are not on a great disparity as regards either business or residence installation so far as mere numbers are concerned. Much of the testimony at the first hearing, and practically all at the second, dealt with the inconvenience and annoyance due to the lack of physical connection, and the company's refusal to transmit messages originating on their lines, or connections over those of the other company. A number of witnesses testified to this inconvenience and a number of others were ready to testify, but as such testimony would be merely cumulative it was deemed unnecessary to extend the record with a mass of cumulative evidence. Among the witnesses who testified were two dealers in leaf tobacco, a banker, a manufacturer of iron working machinery and one engaged in the marble and granite monument business; also a subscriber to one of the rural lines of the Rock company who is a heavy buyer and shipper of live stock, and

another who is connected with the farmers' line and engaged in the implement, coal and grain business. All the witnesses testifying had occasion to make more or less use of the long distance service afforded by the Bell company. The substance of the testimony was what might perhaps be anticipated where two telephone systems are engaged in serving the same general community and only a small majority of the business establishments and a very small proportion of the residences have the 'phones of both companies installed, and where rural subscribers and those on connecting lines of one company are often entirely cut off from the service of the other company.

In the *Winter* case, *supra*, it was stated, in substance, that to justify the public obligation usually imposed by "public convenience and necessity" there must be present more public exigency demanding it. It is inevitable in such a situation as that at Janesville that the aggregate loss of time, inconvenience, and annoyance through the absence of such physical connection as is here requested must be great, and the conclusion is equally inevitable that a public exigency demands it. And where, as here, the local subscribers are rather evenly divided between the two companies, it is evident that physical connection between the local systems of the two companies, as well as between the local exchanges and the toll systems is called for. That such connection would greatly increase the value of the service to the subscribers of either company is self-evident. That the demand for these connections both local and toll, has found expression in numerous instances, was brought out in the testimony.

Were there no other elements to this side of the question, the Commission would be of the opinion that physical connection is demanded by public convenience and necessity. However, there is another important factor to be considered, and that is the rural subscribers of the two companies, between whom any intercommunication must be much more of a problem than in the city. From an inspection of the Rock County company's directory for 1913, and

supplement as of June 1, 1913, and the Bell company's directory as of May, 1913, it appears that the former company then had about 342 rural subscribers, the latter about 157. Furthermore, the rural subscribers of the Rock County company are practically deprived entirely of Bell long distance service.

In the present case it has been noted that the two companies are almost on a parity. The Bell company has a somewhat larger proportion of the business installations, the Rock County of the residence. In each case the disparity is comparatively small. The rates of the two companies are the same, except that the Bell company has no four-party service for residences and the Rock County no corresponding two-party service. The Bell company charges the same for its two-party service as the Rock County for its four-party service.

The Bell company contends that under physical connection it would suffer irreparable loss through the effect on its local exchange. If the physical connection were ordered the subscriber of one company who desired to be connected with the other company's exchange, for the purpose of either local or toll service, would be required to pay the company of which he was not a patron, a small toll for the privilege. No reason is seen why such a toll or charge could not be so adjusted as to substantially preserve the *status quo* of the two companies as far as any effect of the charge itself should be concerned. Such a charge, when thus adjusted, would not make it an economy for those now having sufficient business to require the 'phones of both companies to dispense with either, and under the circumstances of this case it would perhaps not be lawful to make a charge having that effect, since that would be to take private property without just compensation.

The toll or charge for physical connection would of course include reasonable compensation for additional costs incurred, on account of the physical connection and the connecting companies regular toll charge, if toll service were desired, or whatever should be worked out as a

reasonable charge for the local service, if that were wanted. On account, however, of Chapter 610 of the Laws of 1913 (amending Section 1797m-74), which aims to avoid uneconomic competition and duplication, it would seem that no charge other than the cost of the service and reasonable compensation should be made to those rural subscribers and patrons of connecting companies who have and could have only the service of one company or the other available to them under the foregoing law.

Physical connection, with properly adjusted charges, as outlined above, should increase, rather than decrease, the earnings of both companies, since it would permit each company to retain all that it already has, and also have the benefit of all that potential, casual business, which would not warrant the installation of the 'phone of each company by the single individual or establishment, but the sum total of which, while more or less problematical, would necessarily under the circumstances of this case, be at least considerable.

In addition to business of that nature, the rural subscribers of each company and the subscribers of connecting companies, must be considered. The lack of physical connection between the two companies must be a more serious hindrance for many of these than for the subscribers in the city, and it is only reasonable to suppose that, were this connection made, there would follow from this source an increase of business for each company.

The testimony of a number of witnesses, of whom some were on rural lines and others local subscribers, was to the effect that with the physical connection they would do substantially more telephoning. While the number of these was necessarily small compared with the total possible numbers involved, the weight of their testimony must not be unduly underestimated on that account, since in no respect was it evident that their situation, as far as the need for this service was concerned, was exceptional. It also seems reasonable to suppose that, with the physical connection, there would be an increase in the incoming calls,

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since with the exception of urgent business there must be some deterrent effect on those desiring to call people, whom they know will have to be first reached by messenger service or in some other way, at more or less inconvenience to them and the party called.

Another phase of a situation like the present one, when there is no physical connection, was noted in the *Winter* case, *supra*, and that is the additional expense of the delay in handling a long distance call to a person on the other company's lines who must be reached by messenger or otherwise, before the call can be given. This additional expense would, of course, be eliminated under physical connection.

An implied, rather than direct objection, of the Wisconsin company, was that the Badger Telegraph and Telephone company, through which concern the Rock company offers most of its long distance service, is a separate corporation and that therefor an order directed to the Rock company, requiring connection of toll lines, would not affect the former. This objection does not seem fatal. The secretary and general manager of the Rock company stated, as has been noted, that his company owns the bonds, and nearly all the stock of the Badger Telegraph and Telephone Company and that in the comparatively near future the two companies were to be merged. They are thus associated companies. He also stated that the Badger Telegraph and Telephone Company had always been perfectly willing to make the connection herein desired. Under such circumstances, it hardly seems probable that the expected full effect of the order would be thus frustrated. The order would require physical connection between the two companies for both local and long distance service and the Rock company would be expected to make the long distance service thus controlled, as well as owned by it, available. However, should the Badger Telegraph and Telephone Company decline to permit the connection, it would be made a party in a proceeding before the Commission to compel the connection.

At the time of the hearing the exchanges of the two companies were two blocks apart. The Rock company's new central office is some distance from its old one which it occupied at the time of the hearing. This fact, however, the engineer of the Commission, who submitted a report bearing on the physical aspects of the case, says has no effect on the practicability of the connection beyond the increase in cost. In fact the Bell company's counsel conceded the possibility of the connection. He said, "We would not controvert the fact that it is physically possible to connect the two exchanges."

It appears that the Bell company uses Western Electric transmitters and receivers and the Rock company uses the Kellogg and Sterling Electric Company's switchboard. In the report of the engineer, the conclusion was reached that there was nothing in the equipment and the nature of the circuits of either company which would result in detriment to either company by reason of the connection and that in case any trouble should develop it could be readily remedied.

Since it appears that public convenience and necessity require a physical connection for interchange of both local and long distance service between the exchanges of the Wisconsin Telephone Company and the Rock County Telephone Company in the city of Janesville; that such connection will not result in irreparable injury to the owners or other users of the facilities of the said companies, and that it will not result in substantial detriment to the service to be rendered by them, it follows that an order must be entered accordingly.

The point of making the connection and the extent of same will be left to the companies, and if no agreement between them can be reached as to the place, manner, or method of making the connections a further hearing will be granted the parties by the Commission and a supplemental order made determining the place, manner and method of the connections. As the cost of making the connections will not be great and the benefits derived from the con-

nection will be mutual each company will be required to pay one-half of such cost.

Now, therefore, it is ordered, That the Wisconsin Telephone Company and the Rock County Telephone Company make such physical connection or connections between their toll lines and between their local systems in the city of Janesville as is required for the furnishing of toll line and local service, including rural service, to the subscribers of each company at the stations installed in their residences and places of business over the toll lines and local lines, including rural lines, of the other company. It is further ordered that the expense of making such physical connection or connections and the subsequent maintenance thereof be, and the same is, hereby apportioned equally between said companies.

Thirty days is deemed a reasonable time within which the companies shall comply with this order.

Dated at Madison, Wisconsin, this second day of June,
A. D. 1914.

NOVA SCOTIA.

Board of Commissioners of Public Utilities.

IN THE MATTER OF AN APPLICATION BY THE MARITIME TELEGRAPH AND TELEPHONE CO., LTD., FOR APPROVAL OF A SPECIAL RATE TO BE KNOWN AS THE "PONY FARMERS" LINE RATE.

IN THE MATTER OF THE COMPLAINT OF ARTHUR S. BURGESS, OF CANNING, N. S., *v.* THE MARITIME TELEGRAPH AND TELEPHONE CO., LIMITED.

IN THE MATTER OF HENRY B. HICKS, *et al.* OF BRIDGETOWN, N. S., *v.* THE MARITIME TELEGRAPH AND TELEPHONE CO., LIMITED.

Decided December 5, 1913.

The above application and complaints gave rise to a full investigation into the telephone service in the Province of Nova Scotia, involving a consideration of central office areas, the classification of exchanges, and the basis of long distance and local tolls.

Establishment of Arbitrary Exchange Areas—Exchange Service and Toll Service.

Held: That the area to be served by a central office should be fixed arbitrarily by the Board. Economical service requires that separate communities should be served by separate central offices and that those who wish telephone connection with an adjoining community should pay extra for the extra service.

Shape and Extent of Exchange Area—Location of Central Office—Overlapping Areas.

Held: That circular exchange areas, ten miles in diameter, covering about seventy-nine square miles, will best meet the needs of the Province under ordinary geographical conditions and that the proper location for the central office is the center of the circle. When the central office is not so located, the Board will fix a point which for all purposes shall be deemed to be the center of the area and from which all mileage shall be figured. Where two or more areas overlap, a subscriber located in the common territory may choose the exchange with which he desires connection or may be connected with both or all at the regular rate for such service.

Classification of Exchanges—Rates and Hours of Service.

Held: That exchanges should be classified so that the rates charged and hours of service shall be the same under similar conditions; that a classification based on the number of subscribers connected, including subscribers of connecting companies on a flat rate basis, is the most equitable for the purpose of fixing rates; that, as to hours of service, there should be four classes of service.

That subscribers located within the exchange area but at a distance of more than one mile from the central office must pay mileage rates in addition to the flat rate.

Local Toll Service—Charges between Exchanges.

Held: That a charge additional to the flat rate must be allowed for local toll service into an adjoining exchange area but the Board is not prepared to apply to messages between adjoining exchanges the principles governing long distance messages, the cost of maintenance for local toll lines not being as great as that for long distance toll lines; that local toll rates should apply to messages passing between exchanges not over twenty miles apart by wire mileage from the nearest boundary of the exchange calling to the central office of the exchange called.

Particular Party and Two Number Service.

Held: That the "particular party" method should be adopted for long distance service and the "two number" method for local service, either method, at the option of the subscriber, to be used in affording local toll service.

Initial Talking Period.

Held: The Board fixed the time limit for long distance messages at five minutes, one-fifth of the toll to be charged for every minute in excess of five minutes.

Computation of Mileage—Wire Mileage and Air-Line Mileage.

Held: That local toll service is in the nature of exchange service and mileage should be measured from the nearest boundary of the calling exchange to the central office of the exchange called. The wire mileage is to be taken, except where geographical conditions make the wire line mileage much in excess of the air-line mileage. In such cases the average of the two is to be taken in order that the company and the subscribers shall each bear a proportion of the cost of the added mileage.

Pony Farmers' Line Rates.

The Maritime Telegraph and Telephone Company, Limited, made application for the approval of a special rate for subscribers on farmers' lines desiring service only between the subscribers on the particular line, "this

rate to be \$12.00 for residence and \$15.00 for business places, giving free service on the line to which the subscribers are attached, with a toll of from 5 cents to 15 cents to the nearest exchange, depending on the distance." The regular rates for farmers' line or multi-party line service were \$18.00 and \$24.00 for residence and business telephones, respectively, which embraces general service between all subscribers connected with the exchange.

Held: That the Board is satisfied with the proposed rates but that the toll to the exchange should be only 5 cents in all cases.

In determining the reasonableness of the above rates, the Board stated that until the valuation of the company's physical assets, etc., is made the whole question of rates considered, the only basis of settling the proposed pony farmer line rates is to find the capital cost of the service as nearly as possible, determine the fair return on the capital so invested, find the cost of operation and fix the amount to be set aside for depreciation. The statement prepared from the cost records of the company was not seriously contested and was admitted to be fair. This statement contained an 8 per cent. charge for interest and 8 to 10 per cent. charge for depreciation.

Expired and Obsolete Contracts.

In the case of *A. S. Burgess v. Maritime Telegraph and Telephone Company, Limited*, it appeared that complainant was the lessee of three telephones on a four-party line, one telephone being in each of his two stores and the third in his residence. The complainant's contract, which was made prior to the Public Utilities Act, gave him the right of connection with the Kentville exchange free of charge. One of the complainant's stores was destroyed by fire, a new store being later constructed within twenty feet of where the old store had stood. The telephone company refused to move the telephone from the remaining building into the new, stating that a new contract would be necessary, under which complainant would be cut off from free service to Kentville and also lose connection with his house, owing to the necessity of connecting the telephone to another line. Thereupon the complainant moved the telephone himself into the new building, after which the telephone company, without notice, removed the same. Subsequently the complainant signed a new contract under protest. The rate under the new contract was higher, being the regular rate filed under the provisions of the Public Utilities Act. Free service to Kentville was not included. The telephone company contended that the removal of the telephone from the old store into the new terminated the old contract, and then a new contract was necessary under the schedule of rates filed as required by the provisions of the law.

Held: That the contention of the telephone company must prevail; that the Public Utilities Act requires that all tolls, rates and charges under substantially similar conditions in respect to service of the same description shall be equal.

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The Board requested the company to file returns as quickly as possible showing all contracts in existence not in accordance with the rates and regulations as filed under the provisions of the Public Utilities Act.

The questions raised by the complaint of *Henry B. Hicks et al. v. Maritime Telegraph and Telephone Company, Limited*, were covered by the conclusions reached by the Board in the first part of this decision.*

OPINION.

The application of the Maritime Telegraph and Telephone Company Limited, dated July 30, 1912, for the approval of a rate known as the Pony Farmers' line rate, and the complaints of Arthur S. Burgess, *et al.*, of Canning, dated May 16, 1913, and Henry B. Hicks, *et al.*, of Bridgetown and Lawrencetown respectively filed June 6, 1913, have raised some very important questions relative to the telephone service of the Province which made a very full inquiry and investigation necessary and which rendered it impossible for the Board to file decisions upon the above application and complaints respectively as matters separate and apart from the telephone service in the Province generally.

While the Board, after the fullest consideration which it has been able to give to the questions hereinafter mentioned, is well aware that the conclusions at which it has arrived may, after they have been tried out in practice, require further revisions, it feels that longer delay for the purpose of further study is not in the best interest of either the company or the users of the telephone.

In a general way the questions considered may be grouped under the following heads:

1. Should the area to be served by a central office be fixed arbitrarily by the Board, and if so what should be

(a) Its extent.

(b) Its shape; whether circular, rectangular, etc.

2. Should exchanges be classified for the purpose of determining

(a) The flat rates to be paid within the boundaries of such exchanges, and

(b) The hours of service.

* Editor's headnote.

3. If exchanges should be classified.

- (a) How should such classification be made and
- (b) Determine the classes, and
- (c) The hours of service for each class.

4. Should the toll payable between exchanges be based on the usual long distance tolls or should a special toll be fixed by the Board to be payable between exchanges within an area to be prescribed by the Board.

5. If a local toll should be found to be fair and equitable as set out in Question 4.

(a) Should the company be required to find the person called for, or merely connect the person calling with the number where the person called is expected to be found, and

(b) The duration of the message.

Question 1: Should the area to be served by a central office be arbitrarily fixed by the Board?

This question like very many questions concerning the operation of a telephone system has its difficulties which careful study and consideration only serves to accentuate, but on the whole the Board has reached the conclusion that the balance of convenience is in favor of this question being answered in the affirmative.

Where there are towns, villages or communities of any size, some appreciable distance — say exceeding six miles — apart and their limits as “self contained” communities well recognized, good and economical telephone service requires that they should be served each by its own local “central” office. By this arrangement the service is provided at a lower flat rate than if the area embraced the adjoining community and permits of the subscribers within the exchange area communicating by telephone with one another at such lower rate. For those who wish telephone connection with the adjoining community, such service is provided on payment of a toll on each message. That such service is more economical in operation must be readily apparent and as a result the subscriber who wants the purely local service is not called upon to pay a higher rate

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to help reduce the amount payable by the subscriber who desires the wider service. The latter pays the extra toll for the extra service he wants. Of course geographical conditions may make a departure from this principle of arbitrary exchange areas necessary and each case of that kind will have to be dealt with separately on its merits.

Question 1 (a): Its extent?

After a careful consideration of the areas served by a number of the exchanges in the Province at the present time and bearing in mind the matter of toll charges for telephone communication between exchanges the Board has come to the conclusion that approximately seventy-nine square miles should be the answer to this question.

Question 1 (b): Its shape, whether circular, rectangular, etc?

The Board is of opinion that circular areas ten miles in diameter will best meet the needs of this Province, except in a few cases where geographical conditions make it absolutely necessary that the circular form should be departed from. Where the "central" office of the company is properly located it will be the center of the area and the boundary of the area will be distant five miles from it in all directions. If on application to it, the Board finds that the exchange office of the company is not centrally located relatively to the wire district, it will fix a point which for all purposes shall be deemed to be the center of the exchange area and from which all mileage, etc., shall be measured.

But a difficulty seems to present itself here. Taking the case of two towns with exchanges less than ten miles apart, the boundaries of the exchange areas will overlap and certain territory will be common to both exchanges.

For example, taking the cases of the exchanges of Canning, Kentville and Wolfville; the distance from the Canning exchange to the Kentville exchange is nine miles and to the Wolfville exchange the distance is eight miles; hence, these exchange areas run into or overlap one another. A person living on the most easterly boundary of the Kentville ex-

change area would be at the same time within the area of both the Wolfville and Canning exchanges and within four miles of each of these central offices. To overcome that it is proposed to permit a person situated in territory common to two or more exchanges to elect to which exchange he desires his line to be connected or if he so desires he may have telephones connected with all the exchanges on paying the regular rate, yet to be approved for such service.

Where a circular form of exchange area does not appear suitable or just to the subscribers in any community, or to the company on account of geographical conditions, the Board will hear the parties dissatisfied.

With the area of territory to be served by a "central" determined, it next becomes necessary, in order that persons within one exchange area should under similar conditions enjoy telephone service at the same rates and during the same hours as persons in another exchange area.

To consider Questions 2 and 3.

Question 2: Should exchanges be classified for the purpose of determining,

(a) The flat rates to be paid within the boundaries of such exchanges, and

(b) The hours of service.

At the present time the company does divide its exchanges into classes for the purpose of fixing rates but has adopted no set principle. As to hours of service—hours during which its offices will be open—the Board is of opinion that the exchanges should be classified for both purposes.

Question 3: If exchanges should be classified,

(a) How should such classification be made?

The plan followed at the present time by the company for the purpose of fixing the flat rate to be paid according to the number of subscribers seems to be the most equitable; that is, the number of subscribers connected with the exchange including the number of subscribers of connecting companies, connected on a flat rate basis,

(b) Determine the classes, and

The hours of service for each class of exchange.

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The classification of exchanges as arranged by the company with the filed rates payable by the subscribers in each class of exchange is as follows:

RATES FOR ONE-PARTY LINE.

- Class A. 2,000 subscribers and over: Business, \$45; residence, \$30.
- Class B. 750 subscribers to 2,000: Business, \$40; residence, \$30.
- Class C. 500 subscribers to 750: Business, \$34; residence, \$27.
- Class D. 300 subscribers to 500: Business, \$32; residence, \$24.
- Class E. 150 subscribers to 300, or exchanges having battery call: Business, \$30; residence, \$22.
- Class F. 50 subscribers to 150: Business, \$27; residence, \$20.
- Class G. Under 50 subscribers: Business, \$24; residence, \$20.

The rates for two- or more party service are not given but they increase from Class G to the higher classes in the same proportion.

All persons within the exchange area must under similar conditions receive service on the same rate basis for similar service. Persons further removed from the central office must pay higher mileage than those nearer to the central office in addition to the above flat rate. The mileage rate filed by the company permits of all subscribers having telephone stations connected within one mile of the central office receiving service on the flat rate basis applicable to such exchange without paying mileage while persons having telephone stations connected over one mile from the central office are required to pay three dollars for every fifth of a mile over one mile in addition to the flat rate. This mileage rate was in effect at the time of the passage of the Public Utilities Act and is still in force. The board in the present application does not express approval or disapproval of it.

Under the rate plan at present in force, a subscriber within the city or town limits may have a single line or may be connected with two-, four- or six-party line. Beyond the city or town limits, a subscriber may obtain service, by a private line with mileage or by a party line or "Farmer's line," so called. The rate for the latter service is \$18.00 and \$24.00 for residence and business tele-

phones respectively and mileage is not charged under five miles. The number of sub-stations connected to such a line is only limited by the number it will carry.

As the number of subscribers increases the exchange is supposed to grade from class to class and the flat rate payable by subscribers is also supposed to increase according to the above scale. There is no such arrangement for an extension of the hours of service as the exchanges grade up from class to class and the Board is of opinion that the extension of the hours of service should not longer depend upon the caprice of the company or the determination of the community to obtain increased hours of service, but should follow a settled plan.

At present there are, as to hours, practically four classes of service, *viz.*:

Class 1. Continuous service.

Class 2. Continuous service except Sundays and public holidays when office is open only at specified hours.

Class 3. All day service, the hours varying in different exchanges, except on Sundays and holidays when office is open only at specified hours. No night service.

Class 4. All day service except noon and tea hours and no service on Sundays or holidays. No night service. The hours as in Class 3, varying in the different exchanges.

The Board is satisfied that four classes of service are sufficient, but is of opinion that the following changes should be made in the classes, and with such changes the classes of service are approved.

In Class 2: The exchanges of the company should not be closed on public holidays. While this will bear a little more heavily on the operators—the Board has carefully gone into this phase of the matter—still the needs of the subscribers must also be considered and as the telephone has now become a real necessity in every day life, as complete a service should be given as the revenue received warrants. It is to be borne in mind that Class 2 will only be in force in exchanges in which the company should have two or more operators in order to furnish satisfactory ser-

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vice. Hence no doubt the operators, with the approval of the company, will be able to work out a time table under which they will be free from office duty during at least a portion of every holiday, or all day every alternate holiday.

The Sunday hours in this class vary to some extent in different exchanges and should be made uniform. The operator should come on duty at night at 8.30 o'clock instead of 10 o'clock. With this change the hours in force in most of the exchanges getting this class of service will stand, *viz.*: 12-8, 9-10, 1.30-2.30, 8.30-12.

In Class 3. In this class the hours during which the offices are open seem to vary considerably. After carefully perusing the return furnished by the company the Board has concluded that all offices in this class should be open from 8 A. M. to 10 P. M. In places where the running of trains makes it desirable that the exchange should be open at 7.30 A. M., the company should carefully consider the public convenience and may grant reasonable requests for the opening of offices in any such locality one-half hour earlier than 8 A. M., the hour fixed.

As to the Sunday and holiday hours which at present in this class are from 1.30 P. M. to 3 P. M., the Board feels that the offices should in addition be open for one hour in the forenoon and the company will therefore fix an hour between the hours of 8 A. M. and 11 A. M., making the hour the same in all exchanges of this class in order to take care of long distance calls.

Class 4. Here again the hours vary. In the majority of exchanges of this class 8 A. M. to 10 P. M. seem to be the hours in force and should therefore be put in effect in all exchanges of this class. The meal hours will be best arranged to suit local conditions. The Sunday and holiday hours will be from 1.30 P. M. to 3 P. M.

Where under the above classifications offices are permitted to be closed on holidays, only the statutory holidays in effect in this Province are intended.

On the part of the company certain modifications in the present classification of exchanges were suggested but the Board is of opinion that until the question of rates is considered that the present classification should not be disturbed.

Exchanges will from the time of the orders to be made herein becoming effective, receive the following class of service, *viz.*:

Exchanges classes A, B, C, and D, will receive class 1 service.

Exchange class E will receive class 2 service.

Exchange class F will receive class 3 service.

Exchange class G will receive class 4 service.

In the event of seventy-five per cent. of the subscribers in any exchange expressing their desire, by written application to the company, to be placed in an exchange of a class higher than the class in which they would be entitled under this decision, in order to obtain a more extended service, and agreeing to pay the rates applicable to such higher class, the company may apply to the Board to have such application approved. On such application coming on for hearing those subscribers who have not signed the application will be given an opportunity of being heard.

Should the toll payable between exchanges be based on the usual long distance tolls, or should a special toll be fixed by the Board to be payable within an area to be fixed by the board?

For service beyond the exchange area and into an adjoining exchange area a charge additional to the flat rate must be allowed the company but the Board is not prepared to apply principles governing long distance message rates to messages passing between exchanges closely adjoining one another.

In the course of the argument as to this question, Mr. Winfield, for the company, very properly pointed out that while for the flat rate plus mileage, a subscriber at one extremity of an exchange, had the right to talk to another subscriber at the opposite extremity of the exchange, a

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distance (under this decision of the Board) of ten miles, each subscriber paid a rate to cover service from the central office to his telephone station, but in the case of the local toll line no flat rate or mileage was received by the company, and therefore the whole cost of construction, up keep, operation, etc., must be borne out of tolls.

As to this contention, the company must bear in mind that roads connecting two towns usually furnish telephone subscribers, being more thickly settled as a rule than by-roads, and that therefore pole lines for a greater portion of the distance must be maintained for local exchange service. Therefore, while the local toll line must of course pay its proportion of the up keep of the poles, that proportion is very considerably reduced owing to the lines running to the local exchanges also occupying the same poles. In the regular long distance toll service there may be many miles of poles erected for and carrying the long distance circuit alone.

In considering this matter of local tolls the Board has had the advantage of perusing the reports of experts on the question elsewhere and therefore has the more confidence that the conclusion which it has reached as to local toll service is just and fair alike to the subscriber and to the company.

The Board is of opinion that local toll rates should be fixed for messages passing between exchanges not over twenty miles apart measured by wire mileage from the nearest boundary of the calling exchange to the central office of the exchange called.

5. If a local toll should be found to be fair and equitable as set out in question 4,

(a) Should the company be required to find the person called for, or merely connect the person calling with the number where the person called is expected to be found?

In the case of long distance tolls the company must get the person called for before the service for which the toll can be exacted is deemed to be rendered, while in the case of local calls from pay stations in the various cities and

towns it is only necessary for the company to call and make connection with the number asked for.

In the case of local tolls the Board is of opinion that the needs of the telephone used can best be met by affording, at the option of the subscriber, both methods of service, viz.: the "two number method" or the "particular party method" in all cases where the person called is distant over five miles from the boundary of the calling exchange, the toll being higher for the latter service. Where he is five miles or under from the boundary of the calling exchange the service will be treated as more nearly analogous to service within the exchange area of the calling exchange and the person calling will be entitled to get the person called before the service will be deemed to be rendered by the company or the toll of five cents be payable.

(b) *Duration of the message.*

In the case of long distance messages the time limit is three minutes, while in the case of local calls from pay stations there is no time limit.

In the opinion of the Board, in view of the rates to be fixed for the service a time limit will be necessary and the time limit will be five minutes. Where the duration of the call exceeds five minutes, one-fifth of the toll will be charged for every minute in excess of five minutes.

Method of computing mileage and tables of rates. A subscriber within an exchange area is entitled to speak to all other subscribers in the exchange on a flat rate basis. On behalf of the company it is submitted that this rate only pays for his line to the central exchange from his telephone station and for the switching charge on his calls and that therefore the mileage should be measured from the central office calling to the central office called as in the case of long distance messages. In the view of the Board the local toll service is more in the nature of exchange service and as the flat rate is for service within the exchange area the mileage should be measured from the nearest boundary of the calling exchange to the central office of the exchange called, and will be based on pole line mileage between those two points.

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Where geographical conditions make the wire mileage much in excess of the air mileage, such as a harbor or lake, etc., which the company prefers to go around by pole line rather than to cross by cable, it is the opinion of the Board that the subscribers and the company should each bear a proportion of the cost of the added mileage. In such cases the air mileage and the pole line mileage between the two points will be added together and then be divided by two, the result obtained being the mileage for the fixing of local tolls.

The rates for local toll service will be as follows:

	Two number method		Particular party method	
	Subs.	Non-subs.	Subs.	Non-subs.
Not exceeding five miles.....	.....	.....	\$0 05	\$0 10
Over 5 miles and not exceeding 10 miles	\$0 05	\$0 10	10	15
Over 10 miles and not exceeding 20 miles	10	15	15	20

In order to get the benefit of the particular subscribers rates subscribers must call to or from points in their own telephone exchange area and satisfy the central office in such exchange area of their standing as subscribers in order to have the call charged to them in such exchange. The company will put the above decision into effect on or before January 1, 1914.

An order will issue accordingly.

PONY FARMERS' LINE RATES.

In this matter *Mr. Covert, K. C.*, and *Mr. Pearson*, appeared for the applicants, and *Mr. McLellan, K. C.*, *contra*.

It is an application made by the Maritime Telegraph and Telephone Company, Limited, for the approval by the Board of a rate of \$12.00 and \$15.00 respectively, for residence and business telephones in rural districts, giving free service on the line to which the subscribers are attached, with a toll of from 5 to 15 cents, depending on the distance, for messages to the nearest exchange of the

company where switching service is required. For the flat rate a subscriber is enabled to talk to all other subscribers on the same line with himself. The toll is payable where such subscriber desires to speak with someone off such subscriber's line and it is necessary for him to call "central."

The present rates for farmers' lines or multi-party lines are \$18.00 and \$24.00 respectively for residence and business telephones with no toll and the subscriber is permitted to talk to other subscribers on the same line with himself as well as to subscribers connected with the exchange with which his line is connected.

The line, under both of the above classes of rates, is a multi-party line with the number of sub-stations on it only limited by the business it will stand.

The proposed Pony Farmers' line rate to persons who only desire to speak with one another on the same line and who do not feel that they can afford to pay an additional sum of six dollars for the privilege of calling the exchange with which their line is connected, a convenience which they perhaps would not require to exercise except a few times each year and for which they would be very willing to pay an additional toll.

On the other hand, the keeper of a general store or the rural business man desirous of often calling the central exchange with which his line is connected, for the purpose of speaking to business people in the town, may have to pay more than formerly, this depending of course on the number of his messages.

The proposed rate was filed by the company on July 30, 1912, in compliance with the Public Utilities Act and the Board, after considering the application, notified the company on August 23d following that it was not prepared to approve the proposed rate until after a hearing.

At a sitting of the Board on October 4, 1912, the representatives of the company were heard and on October 22, 1912, the Board having reached the conclusion that a public hearing was desirable, made an order setting the

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hearing for November 19th following at the Board's office at Halifax and ordered that a notice thereof be inserted in the daily papers.

The hearing was held pursuant to such order and further hearings were held on November 26, 27, December 10, 1912, and May 20, 1913. A number of persons from various parts of the Province attended and were heard in opposition to the proposed rate. As the proposed rate was in force in some places, the Board on December 26, 1912, filed a memorandum permitting the rate to go into effect in eighteen named places until April 1, 1913, with a view of learning from actual experience how the proposed rate would work out and requiring the company to file with the Board monthly returns for the months of January, February, March and April, 1912. The full service went into operation in only nine of the places named. On April 24, 1913, on the application of the company, the rate was allowed to go into force temporarily in three additional places. Interim orders were made from time to time continuing the rate in force and finally an order was made on May 20, 1913, continuing the rate for the twenty-one places named until the further order of the Board pending the conclusion of the hearings and the filing of the Board's decision. The return filed by the company made up on the basis of the farmers' line rate amounted to \$513, while the actual revenue under the proposed Pony Farmers' line rate as shown by the returns was \$563.40, an apparent increase in four months of \$50.40, or at the rate of \$151.20 per year.

But of the revenue received in tolls under the new rate, a portion was tolls collected under the regular existing farmers' line rate. On the other hand the returns filed by the company did not include tolls received from calls inward to Pony Farmers' lines which the evidence showed would amount to about one-third of the outward tolls.

The Board is satisfied that the rate as proposed would not work out a serious increase and that those subscribers who only wish to talk to one another on the same line would

obtain that service at a lower and reasonable rate, while those other persons on the same line who wish to talk to the exchange with which their line is connected will not do so by making the rates of all the other subscribers on the line higher, but by paying for the more extended service themselves by a toll. The measured service means that a person pays for just what he gets if the rate is fair. Even though the proposed rate may not work out any serious increase the question remains, is it fair and reasonable? This is a far more difficult matter to figure out. The difficulty is increased by the fact that in some places maintenance, etc., of the poles on which the wires are strung are charged up to through toll lines, while in other places the Pony Farmers' line must bear a portion of the cost. Until a full valuation of the company's physical assets, etc., is made and the whole question of rates considered, the only basis of settling the proposed rate is to find the capital cost of the service as nearly as possible, determine the fair return on the capital so invested, find the cost of operation, and fix the amount to be set aside for depreciation. The statement prepared and put in by the company shows the following costs of construction and annual charges in which are included cost of operation, return on capital, and depreciation; compiled from the cost records of the company:

" Pole Line :

Average cost to erect 1 mile of 22-ft. cedar poles..... \$140 00

Annual Charges :

Interest, 8 per cent.....	\$11 20	
Depreciation, 8 per cent.....	11 20	
Repairs	4 00	
Taxes	1 00	
Proportion of general expenses.....	4 20	
		<hr/> \$31 60

Wire Circuit :

Average cost per mile..... 28 00

Annual Charges :

Interest, 8 per cent.....	\$2 24	
Depreciation, 10 per cent.....	2 80	
Repairs	5 00	
Proportion of general expenses.....	84	
		<hr/> 10 88

Sub-station :

Average cost of telephone and subsidiary
apparatus installed 22 00

Annual Charges :

Interest, 8 per cent.....	\$1 76	
Depreciation, 10 per cent.....	2 64	
Repairs	2 50	
Traffic supervision and sundry operating expenses	1 82	
Proportion of general expenses.....	66	
Other operating expenses.....	3 75	
		<hr/> 13 13
		<hr/> \$55 61 "

This statement was not seriously contested by Mr. McLellan, but in the main was admitted by him to be fair. While the Board is not prepared, until a more complete inquiry is made, to adopt the company's memorandum *in toto*, it is sufficient for the present inquiry.

Before it is possible to apply the above memorandum, it is necessary to estimate in some way the number of miles of line which will be strung on poles already erected, the annual charges of which are charged to long distance lines,

and the number of miles which will require wholly new construction and be chargeable to Pony Farmers' lines.

Taking the nine Pony Farmers' lines which were in operation and are covered by the returns made by the company, it is found that of 107½ miles of circuit, only 38 miles required new pole construction, slightly over ⅓ new and ⅔ old. The average length of the Pony Farmers' line circuit is 12 miles. The annual cost of such line, based on the memorandum of cost above referred to and leaving out of the sub-stations or telephone instruments and cost of installation of same, is as follows:

¾ or 8 miles on existing poles at \$10.88 per mile.....	\$87 04
¼ or 4 miles, including new pole construction at \$42.48 per mile	169 82
	<hr/>
	\$256 96

or an average annual charge of \$21.41 per mile.

With one telephone per mile the cost per telephone would be \$21.41 plus \$13.13.....	\$34 54
With two telephones per mile, \$21.41 plus \$26.26.....	23 83
With three telephones per mile, \$21.41 plus \$39.39.....	20 26

The annual charges on the nine lines in operation would be as follows:

69½ miles on long distance pole lines at \$10.88....	\$756 16
38 miles (Pony Farmers' Line pole lines) at \$42.88.	1,614 24
76 telephones at \$13.13.....	997 88

TOTAL ANNUAL COST.....	\$3,388 28
Revenue per year*	1,689 20
	<hr/>
Loss	\$1,679 08

(Of course, it is to be fairly assumed that many more sub-stations will be connected with these lines, which together with the tolls will more than meet this deficit. The seventy-six telephone sub-stations connected were obtained within a period of less than one-third of a year. It is apparent from the foregoing calculations that the flat rate proposed by the company is not excessive.

The object of the company in fixing a low rate with a

* \$563 40 (4 months revenue) multiplied by 3 = \$1,689.20.

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toll charge is to enable the farmer to provide himself with telephone service with the right to talk free to his neighbors who are subscribers on the same line with himself, and who in the case of necessity, for calling a doctor, etc., would have this additional accommodation by the right to call up the exchange with which his line was connected on payment of an additional toll.

On the other hand, as has already been pointed out, a subscriber, be he proprietor of a general store or a more prosperous farmer with considerable business, who has more call on the exchange with which the line is connected for the purpose of carrying on his business, while paying the same flat rate will have to pay a toll for each message. In other words, he pays for exactly what he gets so long as the toll is not exorbitant, and the other subscriber on the same line with him is not called upon to pay a high flat rate in order to enable his neighbor to get cheaper telephone service. The general storekeeper situated some miles from the central office must also bear in mind that it is the number of subscribers which can be secured at a lower rate between his store and the exchange that makes it possible for the company to extend its lines out to his store.

As to the amount of the toll to be charged the Board has considerable difficulty in understanding just what the application means. It reads "this rate to be \$12.00 for residence and \$15.00 for business places, giving free service on the line to which the subscribers are attached, with a toll of from five cents to fifteen cents to the nearest exchange, depending on the 'distance.'" Distance from where—the central office of the nearest exchange to the nearest subscriber, or to the subscriber further away? From the way the application was presented the intention seemed to be to measure the distance from the exchange to the subscriber furthest away. This view of the company's intention seems to be borne out by Mr. Winfield's statement at one of the hearings. Speaking of the Belmont exchange, one of the Commissioners stated by way of question, "They (the subscribers) pay \$12.00 per year for the

privilege of talking to each other and pay ten cents to talk to Truro." Mr. Winfield replied, "It is about 15 miles to Truro and it should be fifteen cents, at the rate of one cent per mile." That the distance from the central office to the nearest subscriber could not have been intended would seem to be clear, as the nearest subscriber was only distant from the central office eight miles, as shown by the returns filed with the Board.

The flat rate paid by the Pony Farmers' line subscriber gives him the right to speak to any subscriber on his line, whatever its length or the distance between subscribers, or, in the words of the application, "giving him free service *on the line* to which the subscribers are attached," for the flat rates named. It was stated that the Pony Farmers' line was designed to fill exactly the same place as the "Farmers' line" or multi-party line, only on a different rate basis, and to be used in rural districts where the population was sparse. Farmers' lines are constructed in all exchanges of classes "E," "F," and "G," where the mileage to subscriber's station would exceed one mile.

As in the case of Farmers' lines, subscribers are taken on at points distant one mile from the central office or at the town or community limits, it must follow that if the Pony Farmers' line is to afford a similar service subscribers will be taken on at the same distance from the central office. From the returns filed by the company, it appears that the distance from the central office to the nearest Pony Farmers' line telephone is 2 ½ miles, while the greatest distance between the central office and a Pony Farmers' line subscriber is 14 miles.

If, then, Pony Farmers' lines will take on subscribers at a point so near the central office the Board does not understand what the distance the subscriber may be from the central office should have to do with the amount of the toll.

A non-subscriber from any point within the town or community limits on payment of a five cent toll can call any subscriber in the exchange. Therefore a Pony Farmers' line subscriber should not be asked to pay more for the same service as under his flat rate he has the right to

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speaks practically to the point where the non-subscriber speaks from to the central office and if the application is to be read literally, has the right to speak on the line to which his telephone station is attached right up to the central office building into which the line runs. This being the case, it only remains to determine what the toll should be to cover cost of the switching in the exchange and the privilege of speaking to a subscriber in such exchange. Without any hesitation the Board is of opinion that a toll of five cents is sufficient, fair and reasonable.

From the returns filed, it appears that some of the Pony Farmers' lines are connected to toll lines. In such cases the local toll rates as laid down in the earlier part of this decision, or the long distance toll rates of the company as the case may be, will be the approved rates for the service from the point of connection to the destination of the call, and in case of such calls no Pony Farmers' line toll will be payable. For the purpose of applying the local toll rates the exchange area will be as laid down in the earlier part of the decision, the point of connection with the local toll line or long distance line being treated as the center of the exchange area.

Mr. McLellan, in the course of this inquiry, produced a statement of tolls which had been paid by a subscriber (a storekeeper) on the Belmont exchange amounting to \$8.20 and on that statement based the argument that the tolls payable by that subscriber for one year on account of the Pony Farmers' line rate would add \$100 to his flat rate for telephone service. On perusal of the bill in question it was found that only 23 messages, or \$2.30, was paid under the proposed Pony Farmers' line rate, the balance, \$5.90, being for long distance tolls to Halifax, Amherst, Dartmouth, St. John and other places. These long distance tolls would have been the same under the previous rate and have nothing whatever to do with the Pony Farmers' line rate.

A point which was not touched upon by counsel on the investigation is as to the number of sub-stations to be connected with one line and in the event of the number limited

and that limit being reached and a second line necessarily run out to take care of the overplus of persons desiring telephone service the rate, if any, to be paid for connection between such lines, *i. e.*, to cover the cost of switching, etc. So far the matter of switching has only arisen between the lines of connecting companies. It is the practice of the company to connect as many sub-stations — telephones — to a line as it will possibly carry in order to save the necessity of running out extra circuit. From the evidence presented to the Board it would appear that it is the wish of the subscribers that this should be done in order that they may be able to talk with a greater number of persons even though they may find the line engaged four times out of five that they go to use their telephones.

That, in order to furnish satisfactory service, there should be a limit to the number of sub-stations connected with a line is unquestioned, but the difficulty is to fix the number. It altogether depends on the traffic. While in some localities six or eight sub-stations would be all a line could carry, in others twenty might be connected. The result of overloading is that a person on going to his telephone would constantly find the line engaged. With some hesitation the Board has come to the conclusion that the limit should be placed at fifteen, but in places where the traffic is heavy the company will be expected to only connect such a number of sub-stations as will not interfere with the providing of a reasonable and adequate service.

In regard to the switching between two or more lines in the same locality, the Board is of opinion that it must be treated as a call to the exchange with which the lines are connected and that therefore the switching charge will be five cents.

As on the hearing the applicant company amended its application, which was general and extended to the whole Province, by limiting it to eighteen named districts to which three other districts were subsequently added, the application will be allowed on the condition and with the changes set out in this decision and the rate approved with such changes to take effect in the following districts:

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Debert, Alma Belmont, Hopewell, Maccan, Spryfield, Beach Meadows, Eastern Passage, St. Margaret's Bay, Clarkeville, Tracadie, Heatherton, Doddridge, Harbour Au Bouche, Big Bras d'Or, Alder Point, East Bay, Jacksonville, Argyle, Northfield, Wentworth.

It may also be put in effect in other districts after the approval of the Board has been first obtained. It is, of course, to be understood that the existing farmers' line, or multi-party line rate, is not to be affected in any way by this decision.

As the Pony Farmers' line rate is admitted by the company to be largely in the nature of an experiment, it is proposed that for a period of one year from the passing of the order herein, that the company shall report quarterly the following information to the Board:

Name of exchange, number of residence and business telephones respectively, length of line, number of toll calls, and toll revenue.

An order may issue accordingly.

COMPLAINT—A. S. BURGESS *v.* MARITIME TELEGRAPH AND TELEPHONE COMPANY, LIMITED.

The above complaint was filed by Arthur S. Burgess, merchant and manager of the Trading Company, Limited, of Canning, in the county of Kings, on behalf of himself, his firm, and other subscribers, on the 16th day of May, 1913, and the answer of the respondent company thereto was filed on the 24th day of May, 1913.

The Board, under the powers conferred upon it by the Public Utilities Act, decided to hold an inquiry and a sitting of the Board was held at Canning on July 9, 1913, for the purpose.

The complainant was the lessee of three telephones on a four-party line, one telephone being in each of the two stores of the company, and a third in the residence of the complainant. Under the complainant's contract, which was a very old one, he had the right to connection with the Kentville exchange, free of toll.

One store was destroyed by fire. After the fire the Trading Company erected a new brick block within 20 feet of the store destroyed and asked the Maritime Telegraph and Telephone Company, Limited, to move the telephone from the remaining old building into the new. The telephone Company answered that if they did this a new contract would be necessary and under which the complainant would be cut off from free service to the Kentville exchange and also lose connection with his house owing to the necessity of connecting the telephone to another line. Considering the action of the telephone company unreasonable the complainant moved the telephone himself to the new building and thereupon, without notice, the telephone company removed the telephone from the premises. Subsequently the complainant signed a new contract under protest and had the telephone put in his store. The rate under the new contract was higher, being at the regular filed rates and free service to Kentville was not given.

There was also a general complaint on behalf of the complainant himself, his firm, and others, asking for a readjustment of the telephone situation at Canning.

On behalf of the telephone company it was admitted that it had refused to remove the telephone to the new building except on the condition that the complainant would be cut off from free service with the Kentville exchange, on the ground that such removal would terminate the old contract and a new contract would be necessary which, under the filed rates, would not give free service with Kentville.

On behalf of the telephone company it was further stated that at the time the schedule of rates was filed under the provisions of the Utilities act, a number of irregular contracts existed and that no instructions had been given to the company to cancel such contracts, but new contracts were only accepted at the regular filed rates. It was contended on behalf of the company that as a contract for telephone service calls for a telephone located at a certain place, such contract is terminated and a new contract must be entered into where the telephone is to be installed in

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another place and that Mr. Burgess had been treated precisely the same as all other subscribers at Canning. The apparent discrimination existing at Canning is due to the fact that some of the subscribers are getting free service with Kentville under old contracts, while others, under new contracts, are not.

At the hearing, the statements of the complainant and of G. W. Parker, representing the Board of Trade of Canning, and other subscribers were heard.

The questions regarding exchange areas, service and rates raised upon this inquiry will be determined by the conclusions reached by the Board in the general part of this decision.

As to the right of Mr. Burgess to have a telephone installed in a different premises under a contract made for another premises, the Board is of opinion that the contention of the company must prevail.

As to the matter of alleged discrimination in rates and extent of service caused by the old irregular contract, so-called, which discrimination is also alleged to exist in various parts of the Province for the same reason between localities and between individuals, the Board has requested the company to file returns as quickly as possible showing all contracts now in existence not in accordance with filed rates and regulations. As soon as this information is received the Board will investigate the matter. At the present time it may only be necessary to point out that the Public Utilities Act requires that all tolls, rates and charges shall always, under substantially similar conditions in respect to service of the same description, be charged equally to all persons and at the same rate.

COMPLAINT—HENRY B. HICKS, *et al.* v. MARITIME TELEGRAPH AND TELEPHONE COMPANY, LIMITED.

All the questions raised on this complaint were covered by the conclusions of the Board reached in the first or general part of this decision and will be settled in accordance with such conclusions.

Dated at Halifax, this fifth day of December, A. D., 1913.

PART II.
COMMISSION ORDERS, RULINGS AND DECISIONS
OF INTEREST TO TELEPHONE AND TELE-
GRAPH COMPANIES.

[NOTE.—Owing to lack of space, only summary statements of many of the decisions involving points of interest are printed in this Leaflet.—ED.]

CALIFORNIA.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND
ELECTRIC COMPANY FOR AUTHORITY TO ISSUE COLLATERAL
TRUST NOTES AND TO PLEDGE BONDS AS SECURITY THERE-
FOR.

Application No. 1038 — Decision No. 1435.

Decided April 15, 1914.

**Sale of Previously Authorized Collateral Trust Notes at Price Fixed by
Commission.**

FIRST SUPPLEMENTAL ORDER.

EDGERTON, *Commissioner*:

WHEREAS, this Commission issued an order* in the above entitled matter on March 25, 1914, authorizing Pacific Gas and Electric Company to issue \$7,000,000 of collateral trust notes and to pledge certain bonds as security therefor; and

WHEREAS, it was provided that \$5,000,000 of said notes should be sold at not less than \$965.61 for each \$1,000 note; and

WHEREAS, it was provided further that the remaining \$2,000,000 of said notes should be sold at a price not less than a figure to be set hereafter by this Commission; and

* Printed in Commission Leaflet No. 30, at page 1337.—ED.

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WHEREAS, Pacific Gas and Electric Company has now filed a supplemental application with this Commission asking for authority to sell \$2,000,000 of said collateral trust notes at a price not less than \$975 and accrued interest for each \$1,000 note;

It is hereby ordered, That Pacific Gas and Electric Company be given authority to sell \$2,000,000 of said collateral trust notes at a price not less than \$975 and accrued interest for each \$1,000 gold note.

The authority herein given is subject to all of the conditions set forth by this Commission in its order* in the above entitled matter of March 25, 1914.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, this fifteenth day of April, 1914.

* Printed in Commission Leaflet No. 30, at page 1337.—Ed.

NEW JERSEY.

Board of Public Utility Commissioners.

IN THE MATTER OF THE COMPLAINT OF THE INHABITANTS OF
THE CITY OF PLAINFIELD *v.* THE PUBLIC SERVICE ELEC-
TRIC COMPANY REGARDING ENFORCEMENT OF CONTRACT
RESPECTING ELECTRIC LIGHTING OF PUBLIC BUILDINGS.

Decided April 1, 1914.

**Free Service to Municipality under Contract Made between City and
Company before Effective Date of Public Utilities Act—
Construction of Public Utilities Act.**

This was a petition for an order requiring the respondent, the Public Service Electric Company, to comply with the terms of a certain ordinance of the city of Plainfield and a certain agreement entered into between the city and the respondent, and, in conformity therewith, to continue to furnish lighting service to the municipal buildings of the city without charge. It appeared that the city of Plainfield, by ordinance approved July 12, 1898, had granted to the respondent's predecessor in title the right to place its distributing apparatus in the public streets of the city. It further appeared that, on November 28, 1898, the city and the franchisee had entered into an agreement which recited, among other things, that "it was understood and agreed, before the passage of said ordinance, and in consideration thereof," that the franchisee undertook "while said company, its successors or assigns shall continue to use any of the streets of said city," to light by electricity, free of charge, all municipal buildings in the city. The respondent contended that the public utility act, in forbidding undue or unjust discrimination, precluded the lighting of municipal buildings in one case without payment and the exacting of payment in other cases for a service physically similar. The respondent further contended that the prohibition of undue or unjust discrimination was an implied repealer by the State, of rights theretofore existing by contract in favor of certain municipalities.

Held: That, by necessary implication, the rights and obligations recited in the subsequent agreement between the city and the original franchisee became part and parcel of the contract created by the passage and acceptance of the ordinance, although their reduction to writing was subsequent to the previous ordinance, and that, being a necessary and predestined complement to the contractual rights and obligations named preliminary in the ordinance, the Board has no alternative but to regard

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them, to all intents and purposes, as part of the contract effected by the passage and acceptance of the ordinance, and as entitled to the same enforcement as though the original ordinance had set them all forth at length;

That when a public utility bargains with a municipality for rights of entry upon, and occupancy of, the public streets, it acts in a unique capacity in which it may assume obligations to make a return for such franchise privileges as it seeks and may express such obligations in terms of money or of service, but that the essential thing is that the obligation so undertaken is one assumed by the utility "*as a bargaining with a body politic*" and not as a duly deputized and unfranchised agency required to afford service to the generality of consumers without undue or unjust discrimination.

That it is one thing for a public utility when bargaining with a body politic for a franchise to promise service without charge; it is a radically different thing for a utility duly enfranchised to sell service to the public generally;

That for the respondent to furnish lighting service without charge to the municipal buildings of the city does not involve undue or unjust discrimination and, under the circumstances of this case, the respondent is bound to afford such service without charge to the city of Plainfield.

Ordered, That the respondent furnish to the city of Plainfield, free of charge, such service as is provided for in the agreement entered into between the city and the respondent's predecessor in title.*

APPEARANCES:

Charles A. Reed, for the petitioner.

L. D. H. Gilmour, for the respondent.

REPORT.

By petition filed with this Board on January 12, 1914, the petitioners asked this Board to enter an order requiring the respondent to comply with the terms of a certain ordinance and a certain agreement; and, in conformity therewith, to continue to light the municipal buildings of the city of Plainfield without charge.

The case was heard at the state house in the city of Trenton on January 27, 1914, both parties being represented by counsel.

* Editor's headnote.

The essential facts in the case are practically undisputed.

It appears that the city of Plainfield, by ordinance approved July 12, 1898, granted to respondent's predecessor in title the right to place distributing apparatus in public streets of the city. Said ordinance designated where and how such apparatus should be located and maintained.

There is no allegation that said ordinance was not duly accepted by the franchisee.

On November 28, 1898, the city and the franchisee made an agreement, reciting, *inter alia*, that

"It was understood and agreed before the passage of said ordinance" (referring to the ordinance of July 12, 1898), "and in consideration thereof, that the said Plainfield Gas and Electric Light Company" (respondent's predecessor in title) "should enter into this contract for the benefit of the said inhabitants of the city of Plainfield and all persons residing therein;"

Among the covenants in said agreement contained is one whereby the franchisee undertakes

"while said company, its successors or assigns, shall continue to use any of the streets of the said city, or any of the subways aforesaid, (to) light by electricity, free of charge, the common council chambers, offices of the mayor, collector, street commissioner, city clerk, the city jail, station house, almshouse, fire houses, as at present lighted or new in proportion, and all other offices, rooms or buildings, owned or occupied by the city officers, or that may be hereafter owned or occupied for city purposes, including city hall if the same shall be built or rented, etc."

This covenant in the agreement is quite apart from, and independent of, another in the same agreement whereby the city at its option may call upon the franchisee to light the city streets. The city expressly reserved its right to take city lighting from other parties, and to resume such service at the hands of the franchisee thereafter, if the city saw fit.

It is in evidence that Public Service Electric Company, by letter of December 8, 1913, notified the mayor of Plainfield that it

"is convinced that it cannot longer continue to lawfully furnish free lighting to the municipal buildings in the city of Plainfield, and unless a con-

tract for that purpose is made before the first of February next, the company will be constrained to discontinue the lighting of such buildings at that time."

In this posture of affairs the city petitioned this Board, as above recited, to make an order requiring the respondent to comply with the terms of the ordinance and the covenants of the agreement as set forth above, and in conformity therewith to continue to light, without charge, the municipal buildings of Plainfield.

What are the grounds upon which the Board may order a public utility to fulfill covenants embodied in a contract related as in this case to a duly accepted ordinance?

The petitioners rest their request for such an order upon Chapter 195 of the Laws of 1911, II., 17, (a). This provides that the Board shall have power, after hearing, by order in writing, to require every public utility

(a) "To comply with the laws of this State and any municipal ordinance relating thereto and to conform to the duties imposed upon it thereby, or by the provisions of its own charter, whether obtained under any general or special law of this State."

Petitioner's contention is that the laws of the State require an observance of contract obligations; that the lighting of the city buildings without charge is a contract obligation of the respondent; that respondent refuses to observe said contract obligation; and that therefore this Board has jurisdiction and should order compliance with the contract.

The Board is clearly of opinion that the section of the statute cited warrants the Board to order a public utility to comply with the laws of this State which relate to the utility by reason of the utility's specific character as a duly delegated agent of the State for affording service, safe, adequate and proper, at reasonable rates, and without undue or unjust discrimination.

But it is a hazardous pressing of the language of the statute which would make it imply that this Board may order a public utility to make a payment of money lawfully

due to a contractor for work done, or to comply with a contract which differs in no way from a contract assumed by private parties.

The enforcement of obligations, such as that just instanced, of a public utility, it was clearly never intended to impose upon an administrative board, or to withdraw even in the first instance from the jurisdiction of the courts.

If the obligation of the respondent to light without charge the public buildings of Plainfield as a continuous payment for respondent's right of entry upon and occupancy of streets of Plainfield, said rights being obtained when its franchise from Plainfield was bargained for, were one flowing wholly from a contract that in its nature is entirely akin to a contract between two private individuals it would be an obligation not intended for this Board's cognizance or enforcement under the statute.

But this Board is not persuaded that the contractual obligation of the respondent to light the city buildings free of charge is one arising from a contract such as might be concluded by the respondent in a quasi-private capacity. The passage and acceptance of the ordinance approved July 12, 1898, created certain contractual rights and obligations between the city and the franchisee. Some of these rights and obligations, such as the designation of streets on which the franchisee's distributing apparatus may be placed, are described in the ordinance. But the rights and obligations created by the passage and acceptance of the ordinance are not set forth in their entirety in the ordinance, but are defined in the subsequent agreement. This fact is attested by the preamble of the agreement of November 28, 1898, wherein it is explicitly stated that:

"it was understood and agreed before the passage of the said ordinance, and in consideration thereof, that the said Plainfield Gas and Electric Light Company should enter into this contract for the benefit of the said inhabitants of the city of Plainfield and all persons residing therein."

Hence the omission of the ordinance to recite each and all of these contractual rights and obligations *in extenso*

does not operate to deprive the rights and obligations subsequently set forth in the agreement, of the binding force imparted to them by the passage and acceptance of the ordinance. By necessary implication the rights and obligations recited in the agreement become part and parcel of the contract created by the passage and acceptance of the ordinance, although their reduction to writing was subsequent to the approval of the ordinance. Being a necessary and predestined complement to the contractual rights and obligations named preliminarily in the ordinance, this Board has no alternative but to regard them to all intents and purposes as part of the contract effected by the passage and acceptance of the ordinance, and as entitled under the statute to the same enforcement as though the original ordinance had set them all forth at length.

The case before the Board was argued largely by the respondent on the ground that the Public Utility Act, in forbidding undue or unjust discrimination, precludes the lighting of municipal buildings in one case without payment and the exacting of payment in other cases for a service physically similar. It was argued that the prohibition of undue or unjust discrimination was an implied repealer by the State, of rights theretofore existing by contract in favor of certain municipalities; that the State by this section of the act waived for itself and for its creatures, the various municipalities, rights previously enjoyed under contracts or franchise ordinances, unless such rights had in all cases been uniformly granted to all municipalities by the utility.

The Board is of opinion that this contention is groundless. Undue or unjust discrimination was forbidden at the common law prior to the enactment of Chapter 195, Laws of 1911. If such rights which municipalities have obtained by contract, whether incorporated in ordinances or not, when bargaining in respect to franchise grants, are void now, they have long been void hitherto. That such rights have been upheld in many adjudications precludes the assumption that they were void or have become void. Such

a position may readily prove a double-edged tool for public utilities. If the covenants under which they obtained rights of entry always were void, the franchises in question are, many of them, in a parlous state. The utilities are not entitled to the rights they have obtained by such contracts, unless they honor the valid considerations required of them by virtue of such contracts.

The Board is of the opinion that when a public utility bargains with a municipality for rights of entry upon and occupancy of the public street, the public utility acts in a unique capacity; that in such unique capacity it may assume obligations to make a return for such franchise privileges as it seeks, and may express such obligations in terms of money, or of service. It may in such capacity lawfully undertake to pave the streets traversed by its cars. It may in such capacity undertake to pay to the municipality in money a certain portion of its receipts. It may, in such capacity, undertake to afford a stipulated amount of free service, such as free lighting, or free telephone service for municipal buildings.

The essential thing is that the obligation so undertaken, even though expressed in terms of service to be rendered without money payment, is one assumed by the public utility *as a bargainer with a body politic*, not as a duly deputized and enfranchised agency required to afford service to the generality of consumers without undue or unjust discrimination.

It is one thing to promise service without charge when the utility bargains with a body politic for a franchise; it is a radically different thing for a utility duly enfranchised to sell service to the public generally. In the one case the utility buys particular privileges from a particular body politic; in the other case, the utility sells services to consumers generally. In the one case it buys a franchise; in the other it sells a service.

The Board, therefore, is clearly of opinion that for the

respondent to light without charge the public buildings of the city of Plainfield does not involve undue or unjust discrimination, but that the respondent is bound to afford such lighting service without charge to the city of Plainfield.

The alternative contention of the respondent that such lighting service without charge is a tax, and may be deducted by the respondent under the Voorhees' Act from the taxes paid to the municipality, is a matter not within the competence of this Board.

An order will enter conformably with the determination above made.

Dated April 1, 1914.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board of Public Utility Commissioners

Hereby orders the Public Service Electric Company to conform to the duties imposed on it by an agreement with the city of Plainfield made November 28, 1898, by the Plainfield Gas and Electric Light Company (predecessor in title to the Public Service Electric Company) and to furnish free of charge to the city of Plainfield such service as the agreement referred to herein provides shall be furnished by the Plainfield Gas and Electric Company to said city.

This order shall take effect April 21, 1914.

Dated April 1, 1914.

IN THE MATTER OF THE COMPLAINT OF CHARLES REINCKE
v. THE PUBLIC SERVICE GAS COMPANY.

Decided April 20, 1914.

**Reasonableness of Practice of Discontinuing Service for Non-Payment of
Bills by Consumer Where Deposit is More than Sufficient to
Cover All Outstanding Charges—Nature of Deposit—
Reasonable Notice of Discontinuance of Service.**

APPEARANCES:

Charles Reincke, in person.

L. D. H. Gilmour and *Edmund W. Wakelee*, for the respondent.

REPORT.

This complaint challenges the reasonableness of the practice of the respondent company in discontinuing service to a customer, who has failed to pay a bill for gas within the time limited by the company's rule, when said customer has a deposit with the company, amounting to more than the unpaid bill.

On January 12, 1914, complainant owed two bills for gas, as follows: December: \$2.61, January: \$1.26. On that date, complainant paid the December account, leaving the January account unpaid. On January 13, the company gave notice that unless this bill was paid on or before noon January 14, it would "discontinue the supply of gas." The bill not being paid, service was discontinued in accordance with the notice.

Complaint was thereupon made that the action of the company in thus cutting off service was unreasonable, because the complainant had, for five years past, a deposit of \$5.00 in the company's hands to guarantee payment of bills for gas supplied. A copy of the complaint was forwarded to the company, answer was filed, and the matter came on for hearing at Chancery Chambers, Jersey City, on March 6, 1914.

No question is raised as to the reasonableness of the rule requiring the deposit, nor as to the amount of such deposit. The sole question raised is as to the reasonableness

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of the practice of the company in discontinuing service when the deposit is more than sufficient to pay all outstanding charges.

To determine this question it is necessary to inquire into the nature of the deposit and the reasons which justify its exaction. These are discussed in the case decided* by the Board in February, 1914, involving the reasonableness of the rule of the Easton Gas Works requiring deposits. In that case, the Board said:

"In determining the reasonableness of the impugned rule, it is necessary to distinguish the advance deposit required by such a rule from a minimum charge, a service charge, a meter rent, an insurance fund to insure the integrity of the meter, and the base rate for metered gas or electric current. The sole function of the advance deposit is to ensure the payment of service whose amount cannot be known in advance."

The fund is held to answer the default of the consumer, and whenever the consumer defaults in payment the fund may be resorted to. Its exaction cannot be justified on any other ground. Persons with credit and financial standing are not required to make a deposit. If the fund could be regarded otherwise than as answerable for the default of the consumer, it would be necessary for the company to reduce its claim to judgment and levy on the fund. Clearly the fund occupies no such position. It is a sum of money in the company's hands, which is answerable for the payment of the consumer's account, whenever there is default in the payment thereof in the ordinary course. In this view, the company should have applied so much of that fund as was required to cancel complainant's charge for gas consumed.

In this situation, with complainant's debt extinguished, is one day's notice of a purpose to discontinue service reasonable?

We think not. The company is not required to furnish gas at a risk of loss from non-payment. Whenever it becomes necessary to have recourse to the guarantee deposit

* See Commission Leaflet No. 29, at page 1105.—Ed.

the company is justified in regarding the consumer as of doubtful responsibility and in protecting itself from the danger of future non-payment. But while it still has in hand more money of the customer than is required to meet current accounts, summary discontinuance of service is not warranted. In the judgment of the Board the company would be warranted in giving notice to the customer to restore the deposit to the original amount within a reasonable time or, in case of failure to so renew the deposit, that the account would be closed and the deposit returned, after deducting all service charges to that date.

The company urged that transferring so much of the fund as would satisfy debts due would entail increased bookkeeping. This is undoubtedly true. It must not be overlooked, however, that the company is debtor to the consumer to the amount of the deposit and that its possession renders the company's account secure, and such bookkeeping as is entailed is required by the business of the company.

The Board *recommends* a modification of respondent's rule to conform to the views set forth herein, and respondent is requested to notify this Board within two weeks from the date hereof whether it will so modify its rule.

Dated April 20, 1914.

NEW YORK.

Public Service Commission — First District.

IN THE MATTER OF THE COMPLAINT OF C. PERCEVAL, INCORPORATED, *v.* THE NEW YORK EDISON COMPANY.

Case No. 1729.

Decided March 3, 1914.

(5 P. S. C. R. (1st Dist. N. Y.) 192)

Service by Electrical Corporations—Auxiliary Service—Refusal to Furnish Service to Consumer Receiving Current from Private Plant—Complaint Dismissed.

The complainant and Wing occupied adjoining buildings under separate leaseholds and conducted separate and distinct businesses. Wing's building contained a private electric plant used for supplying Wing's building. Complainant proposed to obtain a supply of electric current from Wing's private plant in the adjoining building between 7:30 A. M. and 5:30 P. M., and applied to the defendant electrical corporation for a supply of electric current under the defendant's wholesale rate, general rate schedule, and power schedule, respectively, in connection with the same equipment, without any limitation as to the hours during which complainant proposed to use the electric current applied for, expecting, however, to use defendant's current only during the night. The defendant refused to accept the complainant's applications unless they contained its standard clause whereby complainant agreed to introduce or use no other electric service in connection with the equipment supplied under the applications without the previous written consent of the defendant.

Held: That the defendant should not be required to supply electric current to the complainant in connection with the same equipment over which the complainant was to receive service from the independent competing private plant.

Contracts Affecting Rates or Service—Electrical Corporations—Legality of Provision Prohibiting Use of other Electric Service over the Same Equipment.

(*Maltbie, Commissioner.*) The provision in an electric current rate schedule, that no other electric service shall be introduced or used by a customer in connection with the equipment supplied with electricity by the electrical corporation without the previous written consent of the electrical corporation, is reasonable and legal.

Service by Electrical Corporations—Competition with Private Plants Selling Current to Consumers other than Tenants—When Service by Electrical Corporation to Competitor or Competitor's Customer is not Obligatory.

(*Maltbie, Commissioner.*) A public service corporation is obliged to supply, under normal conditions, every person who demands service and obtains the same kind of service from no other source, but a public service corporation may not reasonably be required to furnish breakdown service for a competitor furnishing the same kind of service in the same area; and when a consumer undertakes to supply current to adjoining properties not occupied by its own tenants, or where a consumer demands the privilege of switching his installation or any part of it from one source to another, both of which are located outside of his own premises, an electrical corporation is not required to furnish service.

Service by Electrical Corporation—Duty to Furnish Electric Service—Transportation Corporations Law, Section 62, Construed as Applicable only to "Lighting."

(*Maltbie, Commissioner.*) The Transportation Corporations Law, Section 62, providing that, upon proper application of the owner or occupant of any building or premises, a gas or electrical corporation shall supply gas or electric light as may be required for lighting such building or premises, applies to the service only for lighting and not for general use.

Service by Electrical Corporations—Duty to Furnish Electric Service—Transportation Corporations Law, Section 62, Construed as not Applicable to Auxiliary Service.

(*Maltbie, Commissioner.*) The Transportation Corporations Law, Section 62, relating to compulsory service by gas and electrical corporations, does not seem to require an electrical corporation to supply such current as may be demanded by an owner or occupant to finish the lighting of its premises after he has secured a portion of his supply of electricity for that purpose by purchase from a competitor of the electrical corporation.

The proceeding was upon the complaint of C. Perceval, Incorporated, against The New York Edison Company alleging that there was in the course of construction for the sole occupancy of the complainant, for its business, a building situated at Nos. 2-6 Ninth Avenue, in the Borough of Manhattan, City of New York; that on July 30, 1913, the complainant applied in writing to the defendant for electric current and offered to enter into an agreement with the defendant to pay for the same its reasonable and proper charges, and also offered to deposit a sum sufficient to

pay the cost of its portion of the pipe or wire required to be laid and the expense of laying such portion to make connection with the building, and that the defendant refused to comply with the request or to make the connection or to supply any current to the complainant at that building, and requesting that the defendant be required to make the connection with its mains and supply the current in the complainant's building.

On February 27, 1914, the Commission entered an order dismissing the complaint, all the Commissioners present (Commissioners McCall, Maltbie, Cram and Williams) voting in favor of the entry of the order.

On March 3, 1914, Commissioner Maltbie, before whom the proceeding was had, filed the opinion, which is set out below, but no vote was taken upon the question of approving the opinion.

The further facts in relation to the matter appear in the opinion.

Henry H. Whitman, for the Commission.

Spencer, Ordway and Wierum, by *Nelson S. Spencer*, for the complainant.

Beardsley, Hemmens and Taylor, by *Henry J. Hemmens*, for the defendant.

MALTBIE, Commissioner:

The complainant in this case, C. Perceval, Incorporated, is a corporation and occupies, under a long-term lease from the Astor estate, the building located at Nos. 2-8 Ninth Avenue in the Borough of Manhattan, New York City. An adjoining building, also owned by the Astor estate, is occupied under a long-term lease by Frank L. Wing. The business conducted by the complainant in its building is entirely separate and distinct from the business conducted by Mr. Wing in his building, and the two buildings are held under entirely separate leaseholds. The building occupied by Mr. Wing contains a private electric plant, which is used for supplying electricity to that building; but the

building occupied by the complainant contains no electric generating plant. The complainant's business is such that a supply of electricity is required during the night as well as in the day time.

The complainant purposes to obtain a supply of electricity from the private plant in the adjoining building during the hours from 7:30 A. M. to 5:30 P. M., the necessary connections between the two buildings being made without using any space in the street; but, it being impracticable, or undesirable to rely on that source of supply during the night, the complainant desires to obtain electricity from the defendant, The New York Edison Company, when electricity is not being obtained from the adjoining building. For that purpose, the complainant made three written applications to the defendant on July 30, 1913, for the supply of electric current under the defendant's wholesale rate schedule, general rate schedule and power schedule, respectively. The applications contained no limitation as to the hours during which the complainant proposed to use the current applied for; and complainant's counsel, at the hearing in this case, stated that the complainant desired the right to use the Edison service at any time it might choose to do so, although it was expected that the complainant would use it only during the night. The written applications submitted by the complainant were made upon the ordinary printed blanks furnished by the defendant for that purpose, but in each case a certain clause in the printed form had been stricken out by the complainant, reading as follows:

"And that no other electric service shall be introduced or used in connection with the equipment supplied hereunder, without the previous written consent of The New York Edison Company."

These words were stricken out by the complainant because, if they were included in its contracts with the Edison company, it would be impossible to obtain any portion of its supply of electricity from the private plant above mentioned. The Edison company refused to accept the appli-

cations with this clause eliminated, and the complainant has applied to the Commission for an order requiring the Edison company to furnish the desired service.

It is admitted that the complainant's building is within 100 feet of the wires of the Edison company in the adjacent street, so that the company would be required, under the statute, to furnish service to that building unless it should appear that the complainant refused to comply with some reasonable requirement made by the company. It is also admitted that the complainant purposes to use the electric current to be obtained from Mr. Wing for the same equipment—switchboard, wires, lamps, etc.—as that for which the Edison service would be used. In other words, no equipment is to be segregated; and the complainant will not be satisfied with a connection between the Edison mains and certain equipment, such equipment to be supplied exclusively by the Edison company, while certain other equipment is supplied exclusively by the adjoining plant. Complainant wants to have the privilege of switching any or all equipment from one source of supply to the other. It is not claimed that there has been discrimination against the complainant, or that the Edison company has given to any other consumer of electricity the kind of service desired by the complainant, or that the Edison company has made with any other consumer of electricity a contract which did not contain the clause in question. On the contrary, this clause has been included in the company's standard contract forms filed with the Commission as a part of its schedule of rates; and, so far as we are advised, the clause has been uniformly included in the company's contracts with its customers. What the complainant attacks in this case, therefore, is the reasonableness and legality of this clause and the power of the Edison company to require its insertion in any contract, at least in a contract made under the circumstances existing in this case.

The complainant bases its claim that it is entitled to compel the rendering of service by the Edison company, notwithstanding that it also receives service over the same

equipment from the plant in the adjoining building, largely on Section 62 of the Transportation Corporations Law, relating to gas and electrical corporations. This section provides that upon proper application of the owner or occupant of any building or premises, a gas or electrical corporation—

“Shall supply gas or electric light as may be required for lighting such building or premises, notwithstanding there be rent or compensation in arrears for gas or electric light supplied * * * to a former occupant thereof * * *.”

The complainant also claims that in the absence of such a statute, a clause like the one in question would be against public policy as tending to relieve an electrical corporation from its common law duty to serve the public and also as tending to the establishment of a monopoly.

The defendant claims that the clause constitutes a reasonable regulation, that an electrical supply company cannot be compelled to furnish a service which is essentially a breakdown or auxiliary service to the customer of one of its competitors in the business of vending electricity. It is said that as between two electrical corporations holding a franchise in the streets and supplying the public generally, no claim has ever been made that the customers of one company could require a breakdown or auxiliary service from the other company; and that under such circumstances the consumer must choose the company upon which he will rely for his supply. The defendant claims that in the case now before us, although the competing supply of electricity is furnished by the proprietor of a plant making no use of the streets and operating without a public franchise, the same principle should and does apply.

RELATION TO FRANKEL CASE.

This case is in some respects similar to another case recently decided by the Commission (*Frankel Brothers v. The New York Edison Company*,* 4 P. S. C. R. [1st Dist.

* Printed in Commission Leaflet No. 20, at page 480.—Ed.

N. Y.] 272.) The situation in that case was substantially the same as in this, *except* that there it was the proprietor of the private plant who desired to obtain a supply of electricity from the Edison company which might be resold to a customer of the private plant, while in this case it is the customer who desires service. In that case the private plant was used not only to supply the premises on which it was located but also to supply certain adjoining premises in the same block but under separate ownership or control; it was therefore doing a supply business and within a limited area was a competitor of the Edison company.

The Commission held that the Edison company should not be compelled to render the service demanded. Prior to that time, the Commission had required electrical corporations under its jurisdiction to furnish "breakdown service" (including under that term supplemental and auxiliary service) to a private plant used by its proprietor for supplying his own premises with electricity. But it was not considered just and proper to go further and to compel an electrical corporation to furnish such service to a plant used in whole or in part for supplying other possible customers of such electrical corporation. In the opinion adopted by the Commission in that case, it was said:

"It is conceivable that private plants, one in each block, might thus secure a considerable part of the business which is now conducted by the Edison company; and if that company were required to supply breakdown service to block plants, the latter would operate when convenient and require the Edison company to carry the load when most expensive or inconvenient to the block plants. The complainants state that they need breakdown service for use at night or at other times when little current is required, and when it is cheaper to let their private plant lie idle and to draw on the Edison company's supply. When we required the companies to establish breakdown service, including under the one title supplemental and auxiliary service as well, the Commission realized that it would be possible for a customer to shut down his own plant when most expensive for him to operate and switch on Edison service. But it was not contemplated that advantage would be taken of this action to require the Edison company to supply emergency or auxiliary service to a competing company.

"We think it is obvious that it would not be reasonable or proper that one supply company be required to furnish stand-by service to another and to take over temporarily the duty of supplying its customers, particularly when such company would find it inconvenient or expensive to supply them. When applied to two large companies serving the same area and competing for supremacy, the unreasonableness of the suggestion becomes apparent. Now, admittedly, there are some points of similarity between a company supplying electricity generally and a person who has his own private plant, and between these two stand the block plant and the person supplying adjoining buildings which he does not own or rent. But the line must be drawn somewhere, and it seems reasonable to differentiate the company doing a general business, the block plant and the person selling current to persons outside of his own premises from the person who merely manufactures current for his own use and that of his tenants."

It is our opinion that this position is sound; but the present case does not fall under the finding in the *Frankel* case, for the applicant is not a company doing a general business in electric current, or a block plant, or a person selling current to persons outside of his own premises, or a person who manufactures current for his own use or that of his tenants. The applicant has no generating plant at all, and is different from the ordinary user only in the fact that part of the time current is to be obtained from the Edison company and part of the time from the adjoining plant.

However, many of the same arguments that apply to the *Frankel* case apply to the case before us; and it is our opinion that upon the grounds of reasonableness alone, the complainant is not entitled to the relief he demands. If each consumer of a block plant may demand service which is in the nature of breakdown, supplementary or auxiliary service, the block plant could be shut down nights, Sundays and holidays, or whenever there is little electricity required by its customers, the general supply company being required to take care of those periods as well as to supply all deficiencies caused by breakdown or inadequacy of the block plant at any time and even to take over the entire service at the time of peak loads. Further, it is plain that if the complainant in this case, and other users of elec-

tricity similarly situated, are held to be entitled to demand and receive service from a general electrical supply company in addition to service from an adjoining plant, the practical effect of the Commission's decision will be that the individual consumers will apply for service instead of the adjoining supply company.

STATUTORY OBLIGATION.

The complainant rests his case not only upon the ground that the Commission ought in fairness to compel the company to supply him, but also upon the claim that the statute requires the company to do so and that the Commission may not diminish this statutory obligation.

It is important to note in the first place that the express words of the statute relating to compulsory service do not refer to any electric service except that used for *lighting*. Further, the statute provides that when certain preliminary conditions are fulfilled, relating to distance, payment of charges, etc., an electrical corporation shall supply "electric light as may be required for lighting such building or premises." It seems very doubtful whether these words would in any case mean that an electrical corporation must supply such electricity as may be demanded by an owner or occupant to finish the lighting of his premises after he has secured a portion of his supply of electricity for that purpose by purchase from the company's competitor. The company is to furnish electric light *as may be required for lighting such building or premises*. These words are easily susceptible of the meaning that the company is required to furnish a complete supply of such electricity as may be required to light the premises; and as this is a penal statute, and therefore to be strictly construed (see *Jones v. Rochester Gas and Electric Company*, 7 App. Div. 465), this interpretation seems more likely to be the one intended by the legislature. Indeed, the interpretation contended for by the complainant would lead to rather peculiar results; for an owner or occupant would then be entitled to require service not merely from two competing purveyors of elec-

tricity, but from half a dozen or any larger number, if the wires of such competing purveyors happened to pass within 100 feet of his building. It does not seem probable that the law was enacted to afford a person several systems of supply, but rather, to see that he got at least one under certain specified conditions.

It is doubtful whether the statute was enacted to express the obligation of an electric company to supply all applicants. Its terms are not as broad as the common law duty of public utilities, and its aim seems rather to have been to establish a limit of the distance companies may be required to make extensions and to cover arrears, non-payment of bills and other similar matters.

ANALOGOUS CASES.

Our attention has been called to cases in which it has been held that an electrical corporation cannot refuse to furnish electric lighting service on the ground that the consumer also uses gas for lighting. These are inapplicable to the case before us, for the reason that gas service and electric service, although competing with each other to a certain extent, are by no means identical services. Nor do we think the cases are applicable in which it is held that a common carrier cannot refuse to render service to passengers or shippers who also employ another carrier to perform services which the first carrier might render. The conditions under which the services of a carrier are performed are so different from the conditions existing in the case of an electrical corporation, that we think the analogy between the two is not strong. Nearly every person who employs a carrier at all usually finds it necessary to employ many different carriers, of passengers or of goods, under many different circumstances and in many different places. The application of the rule to carriers would be utterly impracticable in a large proportion of cases, if we should grant that it would be desirable. But it is seldom, if ever, necessary for the occupant of a building to take electricity from two different sources, at least for the service of the

same equipment; and the uniform application of the rule to electrical corporations presents no difficulty whatever.

Counsel for complainant specially urge upon our attention the case of *Central New York Telephone and Telegraph Company v. Averill*, 199 N. Y. 128, in which the New York Court of Appeals held an exclusive contract relating to telephone service to be void as against public policy. This case, as well as a number of other cases of similar purport, was fully considered in the opinion of the Commission in the *Frankel* case, *supra*. It is there pointed out that the Court of Appeals placed the greater emphasis, not on the consideration that competition was suppressed, but on the peculiar features of the telephone business which are not present in the electric lighting business. It may be added that when that case was decided by the Court of Appeals, the Public Service Commissions had not yet been given jurisdiction over the rates and service of telephone companies.

The statutes of this State recognize the distinction between a private plant used to supply electricity merely to the proprietor or to his tenants, and a plant which also supplies one or more neighboring buildings. The Public Service Commissions Law (Subdivision 13 of Section 2) defines an electrical corporation as including—

"Every corporation, company, association, joint stock association, partnership and person * * * owning, operating or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad or street railroad purposes or for its own use or the use of its tenants and not for sale to others."

In our opinion, this suggests the point at which the line should be drawn. It is obvious that a public service corporation is obligated to supply under normal conditions every person who demands service and obtains the same kind of service from no other source. It is clear that one public service corporation may not reasonably be required to furnish breakdown service for a competitor furnishing the same kind of service in the same area. Between these

two extremes there are many cases involving peculiar conditions, and at some point a line of demarcation must be drawn. Upon one side of it are the cases where the company is not required to supply. Upon the other are cases where the company is required to supply. Obviously, the cases close to the border line upon one side will not differ greatly from those on the other side of the line, but there must be some point of transition, and in our opinion, the line is crossed when a consumer undertakes to supply adjoining properties, selling his current to others than his own tenants, and where a consumer demands the privilege of switching his installation, or any part of it, from one source of supply to another, both of which are located outside of his own premises.

However, whether the statutes require the Edison company to supply the complainant, is a question of law; and if the complainant has a legal right to such supply, the Commission cannot and would not deprive him of that right. But the Commission does not consider that, if he has no such legal right, he is entitled to a supply of electricity upon the ground that such service would be a reasonable obligation to impose upon the company.

In conclusion, it should be remembered that the Edison company in resisting the demand of the complainant has not done anything to prevent it from patronizing a competing supply of electricity if it chooses to do so. The company only insists that if the competing supply is patronized for part of the time, such competitor must assume the entire burden and responsibility of supplying the complainant. As already stated, the complainant is not willing to segregate part of the equipment. It might be reasonable to require the Edison company to supply certain equipment even though other equipment on the same premises was supplied by another company, provided each class of equipment was kept distinct and the former supplied wholly by the Edison company and the latter supplied wholly by the private plant in an adjoining building. We do not now rule finally upon this point, for the complain-

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ant states that such a finding would not be satisfactory to him and the subject has not been fully considered; but we do wish to point out that it does not follow from this decision that the segregation of equipment for different sources of supply would be disapproved as unreasonable.

We wish also to sound a similar warning as to different kinds of electrical service. It does not follow from the finding in this case that we would not require companies supplying electricity of different voltage or of a different character in other respects to serve a single individual. For example, if a consumer had certain apparatus adapted to direct current and other equipment which could be operated only by alternating current, it might be reasonable (although we do not so decide now) to require the company supplying direct current to serve the consumer even though a competing company were supplying alternating current to the other equipment belonging to the same consumer.

The complaint is dismissed.

OHIO.

The Public Utilities Commission.

A. W. FRENCH v. THE MIAMI VALLEY GAS AND FUEL
COMPANY.

P. S. C. No. 558.

Decided May 1, 1914.

Previous Order Affirmed—Scope of Previous Order Defined.

OPINION.

In declining to rescind or modify the order* heretofore entered in this case, the Commission deems it advisable to define the scope of the order and to indicate the limits of its applicability, both as to the business of defendant company and to other companies engaged in supplying natural gas to consumers.

The decision of the Commission was intentionally and necessarily confined to the case before it and the order was made responsive to the issues raised in that case. The Commission did not attempt to lay down a general rule of universal applicability, to be followed by all companies, under any and all circumstances. The complaint sought nothing more, and raised no other issue, than an interpretation and construction of the defendant company's schedule. That schedule provides as follows:

“THE MIAMI VALLEY GAS AND FUEL COMPANY.

SPECIAL RATE FOR NATURAL GAS.

Effective April 1, 1912.

Piqua:

Troy:

Sidney:

Tippecanoe City: Rate for factory use under boilers, April 1 to October 31, with privilege to discontinue service at any time at option of company, 12 cents per 1,000 cubic feet.”

* Printed in Commission Leaflet No. 24, at page 656.—Ed.

There was no other classification in the schedule, except for gas for domestic use.

The defendant company was furnishing service under this schedule, and the Commission was called upon to decide into which of the two general classifications, devised by defendant, the complainant's business fell. Manifestly, he was not a domestic consumer, and he was in fact a consumer of gas for factory purposes. He was not excluded from the class of users of gas for factory purposes by reason of his use of a gas engine, nor could the defendant, merely by the addition of the words, "under boilers," force all other users of gas for factory purposes into the domestic class.

The effect of the language employed by defendant in devising its schedule was to provide a class defined by the words, "for factory use" and complainant must either come under that class or else defendant had no classification and rate for the kind of service that complainant was receiving.

If a company agrees, by filing its schedule, to sell gas for factory use and provides no other classification except for domestic use, it thereafter has no control as to the method of the consumption of that gas for such factory use. The trouble in which the company found itself in this case arose largely from the indefinite character of its schedule, and there is no attempt in this order to preclude a proper classification that will set forth the price for the sale of gas to be used under boilers at a different rate from the price for domestic or other uses, nor does the Commission decide at this time that the use of gas in gas engines may not form the basis for a proper classification for which service, a rate may be charged different from the rate charged for domestic use or for the use of gas under boilers.

The decision* as first made, and as now affirmed, is directed to the schedule of this particular company, under the issues as made in this case, and it is not to be construed

* Printed in Commission Leaflet No. 24, at page 656.—ED.

to preclude the filing of schedules, either by this company or any other, setting forth proper classifications for gas service based upon the quantity used, the time when used, the purpose for which used, the duration of use or any other reasonable consideration.

ORDER.

This matter came on for rehearing on the twenty-third day of April, 1914, and the same was fully reheard.

Upon consideration of all the facts, including such facts as have arisen since the making of the order herein, the Commission is of the opinion that the original order is not in any respect unjust or unwarranted, and should not be changed, abrogated or modified.

It is, therefore, ordered, That the original order,* made herein on the fourteenth day of October, 1913, be, and the same is hereby affirmed.

Dated at Columbus, Ohio, this first day of May, 1914.

IN THE MATTER OF THE APPEAL OF THE BUCYRUS LIGHT AND
POWER COMPANY FROM AN ORDINANCE PASSED BY THE
CITY OF BUCYRUS, ESTABLISHING THE RATES TO BE
CHARGED FOR ELECTRIC CURRENT FURNISHED FOR LIGHT-
ING AND POWER PURPOSES IN SAID CITY OF BUCYRUS,
OHIO.

P. S. C. No. 590.

Decided May 15, 1914.

**Valuation of Property of Electric Light Company—Bases of Valuation—
Tangible Property—Intangible Property.**

Upon complaint alleging that the rates prescribed in an ordinance of the city of Bucyrus would not permit the complainant to earn a fair, just and reasonable return upon the value of its property in Bucyrus, the Commission considered four valuations of the complainant's property: one submitted by the complainant, another submitted by the city, a third made by the Manufacturers' Appraisal Company, and a fourth made by the engineer of the Commission. The complainant's estimate was based on the repro-

* Printed in Commission Leaflet No. 24, at page 656.—Ed.

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ductive value of the property less depreciation, as was that of the Manufacturers' Appraisal Company and the Commission's engineer, whereas the city's valuation was based upon "replacement value." The Manufacturers' Appraisal Company made no allowance for intangible values, nor did the city, except in the sum of \$99.25 as incorporation expense. Both the Commission's engineer and the complainant made allowances for intangible values.

The Commission made a comparison of the valuations submitted to it by its engineer, by the city and by the Manufacturers' Appraisal Company of the tangible property of the complainant, and, reducing these three appraisals to the same basis, found that, although each of the three appraisers had analyzed the problem from a different standpoint and had arrived at his conclusion upon a different basis of reasoning, the resulting estimates were remarkably close.

The Commission found that, including an allowance for working capital, the value of the tangible property of the complainant was \$81,000.

The Commission, after considering in detail the various items of intangible property claimed by the complainant, including allowances for engineering and superintendence, insurance, taxes and legal expenses, interest during construction, financing and development cost, and further considering all elements of outstanding capitalization, accepted the computation of its own engineer that the intangible property had a reproductive value of \$18,000; that this intangible property had depreciated, and that its present value was \$14,000.

The Commission found that the value of the total property of the complainant used and useful in the production and serving of electric power and light in the city of Bucyrus was \$95,000.*

OPINION.

STATEMENT.

On June 3, 1913, the council of the city of Bucyrus, Ohio, duly passed an ordinance prescribing the rates which any person or corporation furnishing electricity for light or power purposes to the city of Bucyrus or to the inhabitants of said city, might charge for the period of five years from the date of taking effect of said ordinance, and said ordinance was duly approved according to law. At the time of the passage of said ordinance and its becoming effective, the appellant in this case, the Bucyrus Light and Power Company, was, and had been for some years,

* Editor's headnote.

operating a plant for the generation and distribution of electricity for lighting and power purposes to the city of Bucyrus, and to the inhabitants thereof, and being a public utility amenable to the provisions of said ordinance, brought its appeal before The Public Service Commission of Ohio, predecessor to The Public Utilities Commission of Ohio, under and by virtue of the provisions of Sections 614-44, General Code, and complained that said ordinance is unjust, unreasonable and confiscatory for the following reasons:

"1. The rate specified therein will not permit this complainant to earn a fair, just and reasonable return upon the value of its property used and useful for the convenience of the public in said city of Bucyrus.

"2. The rate of 50 cents per month for a minimum charge is not sufficient to pay the reasonable costs of maintaining service to each consumer.

"3. The provisions providing for a minimum charge is not specific, in that it does not specify to what class of service such minimum charge may be applied.

"4. That the ordinance makes no provision for rate for 'breakdown or auxiliary service.'"

and prayed that the Commission fix and determine such rates as would be fair, just and give a reasonable return upon the value of the property used and useful for the convenience of the public of said complainant, as a substitute for the rates and charges so fixed by said ordinance.

The Commission proceeded to a hearing of the said cause on August 29, 1913, and pursuant to the provisions of Section 499-8, General Code, proceeded to investigate and ascertain the value of the property of appellant, the Bucyrus Light and Power Company, for the purpose of ascertaining the reasonableness and justice of the rate and charges to be made by the said appellant, the Bucyrus Light and Power Company, as fixed under the provisions of said ordinance, the basis of the complaint.

FOUR APPRAISALS.

Four appraisals of the property used and useful in the service of furnishing electric light and power to the inhabi-

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tants of the city of Bucyrus, Ohio, and owned by the Bucyrus Light and Power Company, were made and filed with this Commission:

1. By the Bucyrus Light and Power Company, complainant in this case.

2. By experts employed in behalf of the city of Bucyrus.

3. By the Manufacturers' Appraisal Company (voluntarily made), and submitted by the city as an exhibit;

4. By L. G. White, expert of The Public Utilities Commission of Ohio.

1. The appraisal of the complainant company shows a reproductive value of \$187,758.52 and a present value of \$162,028.32. These values include \$54,860.06 for the following:

Contingencies	\$6,113 45
Engineering and superintendence	6,419 07
Insurance, taxes and legal expenses	2,696 03
Interest during construction	4,124 93
Financing	10,621 61
Development cost	24,884 97
TOTAL	\$54,860 06

2. The city's valuation shows what it called a "replacement value" of \$72,190.13, to which has been added by the accountant for the city \$99.25 for incorporation expenses, making a total valuation by the city of said property of \$72,219.38. No other allowance is made for intangible values.

3. The Manufacturers' Appraisal Company's appraisal shows new reproductive cost of \$122,429.41 and present value of \$76,648.42. These values do not include any allowances for intangible values.

4. Mr. L. G. White's appraisal shows a reproductive value of \$99,834.35 and a present value of \$79,160, to which is added \$14,021.62 for intangible values, making a total present value of \$93,181.75.

COMPARISON OF APPRAISALS.

Setting aside for a moment the appraisal made by the complainant company, and also the addition for intangible values made by Mr. White, a comparison of summaries of the other three appraisals shows them to be remarkably close. A tabulation of these summaries is as follows:

City	\$72,219
Mr. White	79,160
Manufacturers'	76,648

The city's valuation does not include a portion of the value of the gas holders, which Mr. White includes in his appraisal to the amount of \$2,765; nor does it include the value of the steam auxiliary which is included in both the White and Manufacturers' appraisals. In the city's valuation, the amount given for the steam plant auxiliary is \$6,500. If these two amounts are added to the city's replacement value, the total is found to be \$81,478 without intangible values. The Manufacturers' Appraisal Company's appraisal does not include anything for the use of gas holders as is included in Mr. White's appraisal. If the \$2,765 is added to the Manufacturers' Appraisal Company's valuation, we find a value of \$79,413.

It will be seen, therefore, that when these three appraisals are reduced to the same basis, i. e., include the same items, the tabulation of summaries would be as follows:

City	\$81,178
Mr. White	79,160
Manufacturers'	79,413

That these three conclusions are so nearly the same is significant, and this is all the more remarkable when it is noted that each of the three appraisers analyzed his problem from a different standpoint and arrived at his conclusion upon a different basis of reasoning.

The city's expert eliminated the gas plant entirely, as indeed did Mr. White. The city's expert evidently itemized his appraisal upon the basis of reproductive value less ac-

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crued depreciation giving in his appraisal only the result of such consideration calling the result "replacement value," while the other two appraisals show the reproductive value by items with depreciation for each item and net result.

Mr. White, as did the city's expert, ignored the presence of a gas plant as being used or useful in the production of electric power, except that Mr. White made an allowance of \$2,765 for the use of the gas holders in storing natural gas for emergency purposes.

Unlike both Mr. White and the city's expert, the expert of the Manufacturers' Appraisal Company appraised the whole plant and estimated his depreciation for each part of the plant with reference to the usefulness of that part for the production of electric power. By this process all of the gas plant was depreciated out of the present value. The only difference between Mr. White's appraisal and that of the expert of the Manufacturers' Appraisal Company is in the treatment of the gas holders, and upon the basis of Mr. White's reasoning \$2,765 should be added to the Manufacturers' Appraisal Company's appraisal to bring it to the same basis.

From the evidence in the case, it is fair to say that, after the valuation by the city and the Manufacturers' Appraisal Company were made, it was shown conclusively that there is some insurance value, for the purpose of making electric power, to be attached to the gas holders. Mr. White's estimate of \$2,765 for these holders, for the purpose of storing gas to be used in emergencies, is considered by the Commission to be a fair valuation.

Upon the treatment of depreciation by the three appraisals there cannot be as accurate a comparison. The depreciation shown in the company's appraisal amounts to \$27,730, while the total depreciation made by the expert of the Manufacturers' Appraisal Company is \$45,171. The discrepancy is traceable entirely to the treatment by the company's expert to the usefulness of the gas plant. In the company's appraisal the gas plant was treated as an in-

tegral part of the property used and useful for electric power purposes. If such treatment were to be agreed to, the total depreciation shown in the company's appraisal appears to be reasonable. However, the evidence discloses that no part of the gas plant, except the two holders, have been used in nine years, or since the gas plant was shut down, for any part of the electric light and power service of Bucyrus, and therefore the elimination of the gas plant as set forth in the other three appraisals, except the present value of the holders, is upheld by the Commission.

The total depreciation allowed by Mr. White on that part of the plant used and useful is \$20,674 as compared with the depreciation of \$27,730 by the company upon the whole plant including the gas plant, which would indicate that the estimates of depreciation made in these two instances were probably as near alike as it would be possible for independent appraisers to judge.

The total depreciation of the Manufacturers' Appraisal Company on that part of the plant not included in the gas plant, is about \$13,000, and somewhat lower than the depreciation as judged by Mr. White, and as evidently judged by the company itself.

The city's expert appraiser does not set forth the depreciation in detail nor does he state the new reproductive cost.

The Commission therefore overrules the contentions of the city that no part of the gas holders and of the steam plant should be included in the present fair value of the company's property.

The Commission finds that the three appraisals, made as they were independently of each other, and each upon a basis different from the other, result in a valuation of physical property so close, one to the other, that all of them may be said to be substantially correct.

The only tangible value that may be said to be lacking, in part at least, is working capital. The company claims that it ought to have \$5,000 in its capital account for working capital. Inasmuch as the only necessity for working

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capital is to be able to purchase supplies and meet pay-rolls in advance of collections for service, the supplies on hand at the time of the appraisals would be a part of this working capital. The city's appraisals includes \$2,722 for this item and the White appraisal \$2,641 — practically the same amount. If \$1,000 is added to the \$2,600 already present in supplies, the working capital is allowed for to the extent of \$3,600 which the Commission believes to be ample in this case.

The Commission, after considering all the evidence touching the values of tangible property and all of the appraisals, one of which was caused to be made by the Commission, determines that the fair value of the tangible property of the Bucyrus Light and Power Company, including working capital, to be \$81,000.

ADDITIONS FOR INTANGIBLE VALUES.

This now brings us to what in fairness ought to be added to the above to make proper allowance for what are termed intangible values.

The city's expert, evidently, from his appraisal and argument in connection with his appraisal, claims that there should be nothing added except \$99.25, already referred to, for such allowances.

The Manufacturers' Appraisal Company does not undertake to go into the subject at all.

This leaves for our consideration the claim made by the company and the allowance suggested by Mr. White.

Mr. White's appraisal includes a sum slightly in excess of \$14,000 that is termed "overhead-charges." The Commission believes that \$14,000 — which is a little less than 19 per cent. of the value of tangible property except land — is sufficient to include all proper and fair allowances for engineering and superintendence, insurance, taxes and legal expenses, interest during construction, financing and development cost. The Commission believes that such an allowance is liberal for all these purposes.

THE COMPANY'S CLAIM FOR INTANGIBLE VALUES.

The company makes a claim for an addition of \$54,860 for these intangible factors, but this amount is arrived at by the application of various percentages of a claimed reproductive value of \$122,265. In its claim the company does not depreciate these intangibles as it does the value of tangible properties. Even experts called by the company admitted that certain of these intangibles should be depreciated in proportion to the depreciation upon the tangible property of the plant. The claim of the company for intangible value is based upon property, part of which is not used and useful for the production of electric light and power; and upon percentages that are round sums instead of estimates taken from the actual history of the property, and is made by the application of one percentage to the total before the next percentage is used. There is little or no evidence substantiating the claim made by the company for allowances to be added to the value of physical value for the purpose of arriving at a fair value upon which a return may be determined. For all these reasons the claim for intangible values, as set up by the company, is ignored.

Mr. White adds about \$18,000 for "overhead charges," or intangible values to the reproductive cost, which he depreciates to about \$14,000 as he does the said reproductive cost, differing slightly from the experts of the company in this particular. We are inclined to think it is safer for the company and the public that whatever intangible values are allowed shall be depreciated in accordance with the average depreciation of the physical part of the property.

There seems to be every reason for including in the cost of the building of any plant a reasonable amount for engineering and superintendence, for insurance and taxes during the time of construction. Perhaps some slight contingencies ought to be allowed for in making of an inventory, but the claim of the company of over \$6,000 for contingencies is absurd. However, when we find that three independent appraisals made of the same property

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show a gross difference of only \$2,000, as in the present instance, a large part of which is traceable to difference in judgment of depreciation, the contingent items left out in any one of the appraisals would be a negligible amount.

In the question of financing and developing cost, the Commission holds that Mr. White's estimate of \$14,000 for intangible values is sufficiently high, not only to include the items referred to in the foregoing, but whatever slight expense there may have been, or ought to have been, for financing, and whatever cost there may have been, or ought to have been, in developing the business. It is only fair to say that this evidence in the case does not show that any very great amount of energy or business acumen was used in building up the business of the Bucyrus Light and Power Company. The claim made by the company of nearly \$25,000 for the "development cost" or "early losses" is absurd in the face of the business showing made. The claim by one of the company's experts that it ought to cost \$20,000 to develop the business of the Bucyrus Light and Power Company, may not be designated as absurd, but if it be not absurd, it is only fair to say that this company's business is not yet developed, and if \$20,000 were necessary to develop the business, the result of a very small portion of the said sum of \$20,000 is shown in the actual business of the company.

The testimony of the bookkeepers of the company very ingeniously attempts to show the large loss set forth in the company's schedule, but the absurdity of the claim must be apparent upon examination of the basis of reasoning. That there is some development cost that attaches to a property, even though that property is used for a monopoly business, is not to be denied. This is especially true of utilities that enter a field where the habits of the community must necessarily be changed in order to obtain its business. In this particular case, the inhabitants of Bucyrus had been in the habit of using for lighting purposes kerosene and gas. It manifestly would cost something to persuade these people that they ought to use electricity. The same is true as to power. The small power-users of Bucyrus have been

accustomed to using steam, perhaps gas, and it would no doubt cost something to change the attitude of mind of such people to the use of electricity. That there was a competition with a gas company for the use of gas for lighting and for small power purposes is not to be considered in this case because the competition was brought about by the entrance of the Bucyrus Light and Power Company, into the field, and is not a competition that was forced upon it.

The cost of attaching business to the plant of the Bucyrus Light and Power Company, as measured in the result obtained was probably a comparatively small amount. Whatever the company may have wasted in these efforts ought not to be and is not considered by the Commission. It is noticeable that the company did not undertake to show any of its books or records to prove that it had actually lost \$25,000 or any other sum in its efforts to attach business to its plant.

The contention as to financing is in much the same shape as the claim for early losses. No effort was made by the company to show that it actually paid any sum whatever for financing. Indeed the whole method of financing this company would indicate that there was actually no cost. As against this, it is claimed that the company is entitled to what it would have cost had its promoters gone into the open market for their money. This brings up the whole question of the wastefulness in which the public utilities have indulged in the matter of financing their undertakings. Certainly if it has cost \$10,621, as claimed by the company, such expenditure would have been wasteful and not to be countenanced. At any rate, whatever the cost of financing may have, or ought to have, been, the Commission believes that sufficient allowance is made in the addition of \$14,000 above referred to, to cover any proper and reasonable charge for financing.

The capital stock of the Bucyrus Light and Power Company is \$250,000 and the funded debt is \$92,000. This is a total capitalization of \$342,000, not including over \$35,000

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of claimed "current liabilities," it is evident that this capitalization bears little or no relation to any value that the company claims for its property. Indeed in the general balance sheet filed in this case the "assets" account does not show any plant valuation but an item entitled "Fixed Capital" "\$359,687.07" is used to balance the large capital items upon the liability side of the balance sheet.

No evidence was advanced by the company to show that there was any true or reasonable relation between its capitalization and its property value. The Commission considered all element of outstanding capitalization in arriving at its final determination of a fair value.

Some claim was made by the city that this company was paying too much for its fuel supply and that the quantity of gas consumed entitled it to a lower rate. The rate paid for gas is in accordance with the gas company's schedule on file with this Commission and until a charge that the rate in this schedule is too high is brought before this Commission in proper, legal form, the Commission is powerless to pass upon the gas rate in this case. The city also claims that a steam plant would have been cheaper in its operation, and therefore the company, having made a business mistake of putting in gas engines instead of steam engines, ought not to have the privilege of being allowed to capitalize for rate making purposes except upon a steam engine basis. Included in this same charge of business mistakes is one touching the location of the present generating plant. There is some force to these contentions and the Commission has not lost sight of them; but we cannot go too far into this matter of criticising business policies unless, perchance, they are flagrant. In this case it is evident that at the time the decisions as to kind of power and location of plant were made, the policy determined upon had enough justification to warrant the action taken. At any rate the mistakes, if mistakes they were, were not flagrantly bad

and are only now to be criticised because there is now a perspective that was not so apparent at the beginning.

The Commission having considered every element, as claimed by the company and brought out by the testimony, as to what ought and ought not to be included in intangible values, and having considered the result of the computations made by its own expert, Mr. White, comes to the conclusion that his estimate is ample and indeed liberal to the company. It must not be understood that the Commission is setting 19 per cent. or any other per cent. as the amount to be added for intangible values of all utilities for the purpose of arriving at their total fair value, but that in the case of the Bucyrus Light and Power Company, it decides that the sum of \$14,000 is ample, and even liberal, for all proper purposes to be included under the head of intangible values.

The Commission therefore finds the fair value of the property of the Bucyrus Light and Power Company, used and useful in the production and serving of electric power and light in the city of Bucyrus, Ohio, to be \$95,000.

ORDER.

This matter coming on this day for further consideration, and the Commission having completed the inventory and valuation of the property of the Bucyrus Light and Power Company, involved in this case, said inventory and valuation being fully set out in detail in a report and record filed in the office of the Commission and designated and identified as, "Report and Record of the Valuation of the Property of the Bucyrus Light and Power Company by The Public Utilities Commission of Ohio, in the case entitled, *In the Matter of the Appeal of The Bucyrus Light and Power Company from an Ordinance Passed by the City of Bucyrus Establishing the Rates to be Charged for Electric Current Furnished for Lighting and Power Purposes in said City of Bucyrus, Ohio* and being case numbered 5901."

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It is ordered, That notice, stating the valuations placed upon the several kinds and classes of property of the said Bucyrus Light and Power Company, as fully set out in said report and record, be given to said Bucyrus Light and Power Company and to the mayor of said city of Bucyrus by registered letter, as provided by law.

Dated at Columbus, Ohio, this fifteenth day of May, 1914.

PENNSYLVANIA.

The Public Service Commission.

In re PETITION OF SCHUYLKILL LIGHT, HEAT AND POWER
COMPANY FOR APPROVAL OF AN ORDINANCE OF THE
BOROUGH OF ASHLAND.

Municipal Contract Docket No. 1.

Decided April 9, 1914.

Public Convenience and Necessity—Invasion of Occupied Field—Duplication of Facilities—Service of Company Occupying Field.

Upon petition by the Schuylkill Light, Heat and Power Company, for the approval of an ordinance of the borough of Ashland, granting the petitioner the right to enter upon the streets and highways of the borough with poles and wires for the purpose of distributing light, heat and power, the Eastern Pennsylvania Power Company, which was already operating in Ashland, filed its objection. The Commission found that the service rendered by the objector in Ashland was adequate in all respects.

Held: That long experience has shown that, while the temporary effect of competition between public utilities occupying the same territory is to secure lower rates, the final result is likely to be the absorption of one utility by the other, followed by an increase of rates;

That the duplication of facilities which would result from the admission of the applicant into the territory in question would increase the amount of the capital upon which the public must pay a reasonable return;

That, while in certain cases the public might be benefited by the admission of a competing company, owing to some fundamental defect in the service of the company already in the field due to inadequacy of plant, want of financial strength or some other reason, no such difficulties are met with in the present case;

That public convenience and necessity do not require the approval of the ordinance.

Petition dismissed.*

OPINION AND ORDER.

PENNYPACKER, *Commissioner:*

The Schuylkill Light, Heat and Power Company, a corporation of the State of Pennsylvania, presented August

* Editor's headnote.

19, 1913, its petition asking for the approval by the Public Service Commission of an ordinance of the borough of Ashland granting it the right to enter upon the streets and highways of the borough with poles and wires for the purpose of the distribution of light, heat and power, and for the purpose of altering, inspecting and repairing its system of distribution.

The ordinance enacted by the borough councils and approved by the chief burgess, August 11, 1913, provided in substance that the petitioner should be granted the right to enter upon the streets of the borough with poles and wires, doing as little damage as practicable, subject to the regulations of councils with respect to grades, travel, and wires and poles; that the system should be in operation within one year; that light should be furnished to certain departments of the borough free of charge under the penalty of forfeiture provided that if similar rights should thereafter be granted to another company the petitioner should only be required to do half of the free lighting; that the petitioner should pay such tax per pole per annum "as is paid by any other company" and paint the poles; that the petitioner should begin operations within three months and file a bond in \$1,000, to be forfeited upon failure so to begin; and that the petitioner should within thirty days file an acceptance in writing and pay all expenses. The petitioner filed the bond and acceptance September 10, 1913.

After the presentation of this petition, a protest against the approval of the ordinance and contract was filed by the Eastern Pennsylvania Light, Heat and Power Company. The allegations of this protest were substantially as follows: The protestant was originally incorporated September 13, 1906, as the Palo Alto Light, Heat and Power Company, which name was subsequently changed. The Edison Electric Illuminating Company of Ashland was incorporated April 17, 1884, for the purpose of supplying light, heat and power to the public in that borough and to corporations and individuals there residing, and in adjacent territory. This corporation was later merged with the

protestants. This corporation, until the merger, and since the merger the protestant, has, since its organization, supplied light, heat and power to Ashland. The protestant has a pole-line nine and a half miles in length, a brick building 71½ feet long and 63 feet wide with boilers, engines, generators and the necessary equipment. Its plant is adequate to supply all demands. The population of Ashland is about sixty-eight hundred and fifty persons. The rates heretofore charged which are set forth in detail are alleged to be just and reasonable and are practically those in force by electric light companies in the State. It is further alleged that there is no necessity for two electric light companies in Ashland and not enough business to warrant their existence in such a way as to give good service.

From the testimony presented at the hearing, the following facts are found:

The Eastern Pennsylvania, Light, Heat and Power Company has an adequate plant and has been furnishing electric light to private consumers in all parts of Ashland. It has twenty-three miles of wire and five hundred and fourteen poles erected. It has an existing contract with Ashland for the borough lighting executed in 1908 for a term of ten years. A few complaints, not very serious, have been made with respect to the efficiency of the service, amounting to fifteen in two months time. The plant is in a position to render, and does render a complete and sufficient electric light and power service to the borough. No ordinance has been passed by councils giving this corporation authority to put wires and poles through the streets of the borough, but they had been erected for many years without objection, and their existence had been recognized by the borough in making the contract. The charge to the borough was \$85.00 per lamp for each year. The protestant offered to furnish light to the borough of Centralia for \$60.00 per lamp per year, and furnish the light to Frackville and Girardville at that rate. Fifteen years ago there had been two companies furnishing light in Ashland, one to the municipality and one to the citizens, but both had been bought out by the protestant.

The ~~facts~~ in this application raise clearly a question of much importance for the first time in the experience of this Commission. A light and power company which has occupied the streets of a municipality with its poles and wires for twenty-nine years, which has during that time served the community upon the whole with approval; has a plant and facilities which enable it to render adequate and proper service. A light, heat and power company which has no plant, but which has associations with a trolley company whose track runs through the municipality proposes to extend another set of poles and wires through the streets not occupied by the trolley company. An ordinance granting these privileges has been passed and approved by the proper municipal authorities and accepted by the corporation. No doubt it is the expectation of the municipality that by reason of the competition in this way introduced, a lesser rate for service will be secured.

Section 11 of Article III. of the Act of July 26, 1913, provides that "no contract or agreement between a public service company and any municipal corporation shall be valid unless approved by the Commission," and Section 2 of Article III. of the same act provides that "upon the approval of the Commission evidenced by its certificates of public convenience first had and obtained, and not otherwise, it shall be lawful for any proposed public service company (b) to begin the exercise of any right, power, franchise or privilege under any ordinance, municipal contract or otherwise."

It is plain that the approval by the Commission and the giving of its certificates of public convenience involves the determination by the Commission that the carrying into effect of the proposed contract would be for the benefit of the public. Does it appear that the approval of this contract would result in such benefit? The passage of the Act of July 26, 1913, and of similar Acts in nearly all of the other States indicates a general judgment that a reliance upon competition between public service companies for securing adequate service and proper rates has not been

successful and that hereafter supervision by properly constituted authorities is to be substituted. Long experience has shown that while the temporary effect of competition between public utilities occupying the same territory is to secure lower rates, the final result is likely to be the absorption of one by the other and then an increase of rates to pay the expense of the warfare. The experience of Ashland which once had two or three competitive companies all of them absorbed by the strongest is an illustration. The municipality in the case of companies furnishing light is burdened with the inconvenience and difficulties which arise from the presence of duplicated poles and wires and finally has to pay at least a reasonable return upon the increased capital required by such duplication. The question always is by what means can the public convenience be best served. It may well be that occasions will arise when because of some fundamental defect in the service by the company in the occupancy of the territory due to inadequacy of plant, want of financial strength, or some other reason, the public would be benefited by the introduction of a competing company. Such cases can be determined upon their own merits when they arise. No such difficulties are met with in the present case. The Eastern Pennsylvania Light, Heat and Power Company has occupied the same territory for twenty-nine years. Its plant is adequate. It has supplied the municipality and the people during the entire period with comparatively little complaint. Should its rates be unreasonable, discriminatory or unduly burdensome it is always within the power of the Commission upon proper complaint to control them and afford relief.

The Commission is of the opinion that the introduction into the municipality of the poles and wires of a second company organized for purposes of competition would be at least of doubtful utility. The approval of the ordinance is therefore withheld and the application for its approval is dismissed.

ORDER.

And now, to wit, April 9, 1914, the finding, determination, opinion and order made by Commissioner Pennypacker withholding the approval of the said ordinance, contract between Schuylkill Light, Heat and Power Company and the borough of Ashland and dismissing the application for its approval is concurred in, ratified and confirmed, and made the finding, determination, opinion and order of the Commission and shall be filed as such by the secretary.

American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York City

COMMISSION LEAFLET No. 32

ERRATA.

Commission Leaflet No. 30, p. 1210. *In the Matter of a Motion by the Commission Regarding the Keeping of Accounts with the State*, should read *In the Matter of a Motion by the Commission Regarding the Keeping of Accounts within the State*.

Commission Leaflet No. 30, p. 1473. The date of the case printed on this page should be March 29, 1914, instead of March 27, 1914.

Massachusetts
Michigan

South Carolina
South Dakota

Wisconsin
and

Interstate Commerce Commission

AUGUST 1, 1914.



American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York City

COMMISSION LEAFLET No. 32

**Recent Commission Orders, Rulings and Decisions
from the following States:**

Arizona	Mississippi
California	Missouri
Florida	Nebraska
Idaho	New Hampshire
Illinois	New York
Indiana	Ohio
Kansas	Oregon
Louisiana	Pennsylvania
Massachusetts	South Carolina
Michigan	South Dakota

Wisconsin
and
Interstate Commerce Commission

AUGUST 1, 1914.

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PART I.
COMMISSION ORDERS, RULINGS AND DECISIONS
DIRECTLY AFFECTING TELEPHONE AND
TELEGRAPH COMPANIES.

ARIZONA.

Corporation Commission.

IN THE MATTER OF OVERHEAD LINE CONSTRUCTION.

Docket No. 173.

Dated June 23, 1914.

**Standards for Overhead Line Construction and Wire Crossings—Adoption
of Specifications Approved by National Electric Light Association
and Association of Railway Telegraph Superintendents.**

. OPINION.

This cause came on regularly for hearing, pursuant to notice thereof duly given, in the office of the Commission, at Phoenix, the nineteenth day of May, 1914.

A review of commission reports shows that action has been taken in the matter of prescribing uniform rules for overhead line construction, by the Commissions having jurisdiction thereof in the following States: Connecticut, Nevada, New Jersey, New York, Oklahoma, Oregon, Vermont and Wisconsin. These several Commissions have issued orders which embody in all essentials the recommendations made by the joint committee, in the report to the Thirty-fourth Convention of the National Electric Light Association, held at New York City, May 29 to June 2, 1911.

California has a statute relating to overhead line construction, which the Railway Commission has had occasion to revise in certain particulars by Order No. 26, specifying the National Electric Light Association's specifications and high pole, one span crossings, for everything over fif-

teen thousand volts. The limit was placed at fifteen thousand volts, instead of five thousand volts, by the Commission, on account of Chapter 499, previously enacted.

The prominence of the engineers who have given [time]* to developing the National Electric Light Association report, the voluntary adoption of the suggestions contained therein by the more progressive public service corporations and the recognition given it by state Commissions, all unite to establish it as an authoritative guide to safe, durable and efficient line construction, from which departures should be made only to meet extraordinary, or abnormal, local conditions.

The order herein shall be designated as General Order No. 37.

GENERAL ORDER No. 37.

It is hereby ordered, That all telephone, telegraph, signal, trolley, electric light and power lines, now or hereafter constructed within this State, shall be constructed and maintained in conformity with the specifications applying to the above classes of lines, contained in the Report of the Committee on Overhead Line Construction of the National Electric Light Association, at its Thirty-fourth Convention, held in New York City, May 29 to June 2, 1911. *Provided,* also, that the same general regulations shall apply to all direct current overhead trolley construction and reconstruction of whatever nature within the State of Arizona.

And further provided, That all lines of aerial wires, or cables, or telegraph, telephone, signal and all other electric wires of similar nature, now or hereafter to be constructed across steam railroad rights of way, tracks, or lines of wires of the same classes, shall be constructed and maintained in conformity with the specifications applying to such classes of wires, cables, or lines, prepared by a joint committee and adopted by the Association of Railway Telegraph Superintendents, in convention at St. Louis, Missouri, May 20, 1913.

* Ed.

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Modifications and additions to said specifications, made by said National Electric Light Association, upon approval first having been made by this Commission, shall be in full force and effect with relation to overhead line construction in this State.

All telephone, telegraph, signal, trolley, electric light and power lines, now constructed in this State, shall conform to said specifications, above mentioned, applying thereto, within a period of five years from the date of this order.

This order shall be effective from and after the first day of July, 1914.

Dated at Phoenix, Arizona, this twenty-third day of June, 1914.

CALIFORNIA.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE SOUTHWESTERN
HOME TELEPHONE COMPANY FOR AUTHORITY TO ISSUE
STOCK, BONDS AND NOTES.

Application No. 871—Decision No. 1589.

Decided June 17, 1914.

Issuance of Renewal Notes Authorized — Repledging of Collateral Securities Allowed.

Supplemental order authorizing applicant to execute notes aggregating the face value of \$8,500 in renewal of notes of a like amount now outstanding, and to repledge certain bonds now pledged as security for same.

SECOND SUPPLEMENTAL ORDER.*

GORDON, *Commissioner*:

Southwestern Home Telephone Company having filed a supplemental application in the above entitled matter asking for authority to issue promissory notes as follows: Joseph S. Hale, \$3,000; Gertrude A. Hayes, \$3,000; Mary G. Casselberry, \$2,500; and it appearing that it is proposed to issue said notes to the same parties for notes in similar amounts illegally issued without the prior approval of this Commission; and it appearing further that the notes herein proposed to be issued will merely continue an indebtedness incurred by the applicant prior to March 23, 1912, when the Public Utilities Act became effective; and Southwestern Home Telephone Company having applied for authority to repledge, as security for these notes, such bonds as have already been pledged as security therefor.

* The original order in this case, dated February 24, 1914, was printed in Commission Leaflet No. 29, at page 740, and the first supplemental order, dated April 8, 1914, was printed in Commission Leaflet No. 30, at page 1182.— Ed.

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It is hereby ordered, That Southwestern Home Telephone Company be given authority, and it is hereby given authority, to issue the following promissory notes: To Joseph S. Hale, \$3,000; Gertrude A. Hayes, \$3,000; Mary G. Casselberry, \$2,500.

It is further ordered, That Southwestern Home Telephone Company be given authority, and it is hereby given authority, to pledge as collateral security for said notes such bonds as have been pledged as collateral security for notes in similar amounts now held by Joseph S. Hale, Gertrude A. Hayes, and Mary G. Casselberry.

The authority given is given upon condition that the notes herein authorized shall be issued in substitution for notes in similar amounts now held by Joseph S. Hale, Gertrude A. Hayes, and Mary G. Casselberry.

The notes herein authorized to be issued shall be for a period not to exceed two years, and for a rate of interest not to exceed 7 per cent. per annum.

The authority herein given is given upon the further condition that Southwestern Home Telephone Company shall report to this Commission within thirty days that it has issued the notes authorized, and that it has cancelled the notes in substitution for which these notes are authorized.

The foregoing second supplemental order is hereby approved and ordered filed as the second supplemental order of the Railroad Commission, State of California.

Dated at San Francisco, this seventeenth day of June, 1914.

FLORIDA.

Railroad Commission.

IN THE MATTER OF DISCRIMINATION BY LAKE BUTLER TELEPHONE COMPANY IN TOLL RATES BETWEEN BUTLER AND JACKSONVILLE.

Dated May 8, 1913.

Discontinuance of Discrimination in Toll Rates as between Subscribers and Non-Subscribers.

INFORMAL RULING.*

It has been called to the attention of the Commission that your company is making an extra charge for long distance service to patrons of your line who are not local subscribers; for instance, the long distance rate between Jacksonville and Lake Butler and Lake Butler and Jacksonville is 40 cents, but to outsiders you are charging 50 cents. This practice is improper and the Commissioners desire that it be discontinued at once, making the 40 cent charge instead of the 50 cent charge.

Kindly investigate and advise if this will be done.

* Informal ruling contained in a letter of the Commission dated May 8, 1913, addressed to Lake Butler Telephone Company, Lake Butler, Florida.
— Ed.

IN THE MATTER OF THE APPLICATION OF MIAMI TELEPHONE COMPANY FOR RULING OF THE COMMISSIONERS AS TO DISCONTINUANCE OF TELEPHONIC SERVICE FOR FAILURE TO PAY RENTALS IN ADVANCE.

File No. 3618.

Dated November 5, 1913.

Discontinuance of Service for Non-Payment of Rental in Advance — Charge for Reconnection.

INFORMAL RULING.*

Yours of the twenty-ninth ultimo, asking to be advised at what period you may discontinue service to a subscriber who has failed to pay rent, and whether or not you have the right to make reasonable charge for reconnecting 'phone that has been put out, account apparent failure subscriber to pay rent.

I am directed by the Commissioners to say that in their opinion you have a right to collect 'phone rent in advance, and when subscriber fails to pay his rent in advance before disconnecting or discontinuing his service, a reasonable time should be given him to pay, say, ten days. If such service is discontinued because subscriber fails to pay within a reasonable time you would be justified in making a reasonable charge for reconnecting his 'phone.

* Informal ruling contained in a letter of the Commission, dated November 5, 1913, addressed to Miami Telephone Company, Miami, Florida, and issued over the signature of the Secretary of the Commission.— Ed.

IN THE MATTER OF THE APPLICATION OF SOUTHERN TELEPHONE AND CONSTRUCTION COMPANY FOR AUTHORITY TO ELIMINATE DISCRIMINATIONS IN FAVOR OF STATE.

File No. 3680.

Dated January 28, 1914.

Elimination of Discrimination.

INFORMAL RULING.*

The Commissioners received your communication of December 17 with reference to your telephone charges, which communication has been under careful investigation and consideration.

Your statement is noted as follows:

"Under a former arrangement, which we are now complying with, we are furnishing the State, in its capitol building, one business 'phone, (known as the janitor's 'phone), at \$3.00 per month, and additional 'phones to the Governor, Secretary of State, Attorney-General, Comptroller, Treasurer, Superintendent of Public Instruction and the Commissioner of Agriculture, at \$1.50 per month. Neither the Railroad Commission nor the Supreme Court were included in this agreement, but hitherto we have been charging them at the rate of \$2.00 per month for their business 'phone in the same building. Also we have supplied the State Chemist with a 'phone at the rate of \$2.00, though he is in a separate building."

We note that your regular rate for business subscribers is \$3.00 per month, and rate for residence subscribers is \$2.00 per month. As shown by your letter, above quoted, you are discriminating in favor of some of your business subscribers as against the others. For example: the offices of the Governor, Secretary of State, etc., mentioned in your letter, are being charged a rate of \$1.50 per month, while other business subscribers are required to pay \$3.00 per month.

* Informal ruling contained in a letter of the Commission, dated January 28, 1914, addressed to Dr. W. L. Moor, President, Southern Telephone and Construction Company, Tallahassee, Florida, and issued over the signature of the Secretary of the Commission.—Ed.

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In the opinion of the Commissioners these charges are discriminatory, and not permitted or authorized by statute. And you are asked to adjust your rate so as to not, in any case, give one subscriber a rate more advantageous than another subscriber. To accomplish this end, and remove all of your discriminations, I am directed by the Commissioners to say that, effective February 1, 1914, your business 'phones should be adjusted on basis of \$3.00 per month, and residence 'phones on a rate not to exceed \$2.00 per month.

IN THE MATTER OF DISCRIMINATION BY LAKE BUTLER TELEPHONE COMPANY IN TOLL RATES BETWEEN STARKE AND JACKSONVILLE.

Dated February 19, 1914.

**Discrimination in Toll Rates as between Subscribers and Non-Subscribers —
Liability of Subscriber for Toll Calls Originating at His Station.**

INFORMAL RULING.*

The Commissioners have given attention to your letter of the thirteenth instant addressed to Commissioner Dunn, asking to be allowed to restore rate of 50 cents to non-subscribers on toll messages between Starke and Jacksonville.

I am directed by the Commissioners to again say that they are of the opinion that a charge of 40 cents to one person and a charge of 50 cents to another is a discrimination, and should not be allowed; that it appears to them that your loss in failure to collect certain toll charges from non-subscribers is a defect in your way of doing business that can be easily corrected. If a non-subscriber uses long distance from a subscriber's 'phone, you have a right to

* Informal ruling contained in a letter of the Commission, dated February 19, 1914, addressed to Lake Butler Telephone Company, Lake Butler, Florida, and issued over the signature of the Secretary of the Commission.— ED.

hold that 'phone and subscriber responsible for the call. The practice is for central to at once advise the person the toll charges so that he may pay it then. [Fla]

COMPLAINT OF DUTTON PHOSPHATE COMPANY AGAINST EAST
FLORIDA TELEPHONE COMPANY.

File 3618—A.

(Correspondence January 14, 1914, to May 16, 1914.)

Rates for Two Parties Using One Telephone.

On January 14, 1914, informal complaint was made by the Dutton Phosphate Company to the effect that the East Florida Telephone Company was charging \$6.00 instead of the regular rate of \$3.00 for the use of a single telephone in the company's one room office, on the ground that the telephone was used by two companies, viz.: the Dutton Phosphate Company and the Dutton Commissary Company. These two companies were distinct corporations, but the Dutton Phosphate Company controlled the majority of the stock of the Dutton Commissary Company. The general superintendent of the Dutton Phosphate Company was in the office but little and the general manager of the Dutton Commissary Company used the telephone in conducting the business for both the companies. The complainant contended that the general manager of the Dutton Commissary Company was entitled to transact business for both companies over the one telephone.

In a letter to the telephone company, dated January 22, 1914, the Commission stated that the company was not justified in making a double charge of \$6.00 for the telephone in question, and in a letter, dated February 6, 1914, the telephone company was again directed to make only one charge of \$3.00.

On May 16, 1914, the Commission informed the company that it had instructed its counsel to bring proceedings to enforce its views and would prosecute the same unless the company agreed to abide by the Commission's decision.*

* Editor's note prepared from record.

IDAHO.

Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE SMITH TELEPHONE COMPANY TO OBTAIN FROM THE COMMISSION A CERTIFICATE THAT THE PRESENT OR FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE, OR WILL REQUIRE, THE CONSTRUCTION OF A TELEPHONE LINE BETWEEN CERTAIN POINTS IN BANNOCK COUNTY, IDAHO.

Case No. F—36.

Decided May 16, 1914.

Certificate of Public Convenience and Necessity — Extension of Telephone Lines — Approval of Stipulation between Companies as to Division of Unoccupied Territory — Reports of Cost of Construction.

OPINION AND ORDER.

STANDROD, Commissioner:

On the ninth day of February, 1914, the Smith Telephone Company, a partnership consisting of William Smith, A. T. Smith, and J. W. Smith, doing business under the firm name and style of the said Smith Telephone Company, filed with the Public Utilities Commission of the State of Idaho their petition, demanding that there be granted to them a certificate that the present and future public convenience and necessity require, or will require, the construction of a telephone line between certain points in Bannock County, Idaho. The petition sets forth that the applicants at the time of filing the same were operating a telephone system through Treasureton, Cleveland, Perry and Thatcher; that they have ten circuits in operation and have 75 'phones on the same; and that the principal office and switchboard of the applicants is located at Cleveland, Idaho; that Treasureton, Cleveland, Perry and Thatcher do not make a large enough exchange, and that

by adding Nitre and Grace one good exchange can be made; and that the additional territory which it desires to enter would embrace the south end of Gem Valley. The petitioners further set forth that they have on hand poles, cross-arms and insulators sufficient to complete the line that they are asking for. Accompanying the petition is a map showing the present location of the applicants' telephone system and the location of the territory which they desire to extend.

On the twenty-fourth day of March, 1914, it appearing to the Commission that there were other telephone companies within or near the field contemplated to be entered by the applicant, the Commission caused notice of the application to be given to the Gem Valley Telephone Company and the Soda Springs-Lago Telephone Company, and fixed the time and place for the hearing of the application at Soda Springs, Idaho, on Wednesday the fifteenth day of April, 1914, at 10.00 A. M.

On March 24, 1914, the Gem Valley Telephone Company filed with the Commission its petition asking that a certificate that public convenience and necessity require, or will require, the construction of a telephone pole line and system between certain points and within certain localities in Bannock County, State of Idaho.

The petition of the last named applicant sets forth that it is a corporation organized and existing under the laws of the State of Idaho, and that its principal place of business is at Grace, Bannock County, Idaho. The petition sets forth the amount of its capital stock authorized and the amount of the same issued, and the purpose and powers provided by its article of incorporation; that its purpose is to either purchase, lease or construct and to operate and maintain public and private telephone lines in the territory commonly known as the "Gem Valley" in said Bannock County, State of Idaho; that it will construct a trunk line extending from Alexander in said county to Lago with numerous branches therefrom; that the territory which it purposes to enter is partially served by the

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Soda Springs-Lago Telephone Company, and that the service of the latter company does not entirely cover the territory proposed to be served by petitioner and is wholly inadequate to properly supply such territory; and that within the territory proposed to be occupied by said applicant are situated the towns of Grace, Nitre, Bench, Thatcher, Cove, Turner, Central, and Lago, all of which have post-offices and general stores with a combined estimated population of 3,000; that the main or trunk line of The Mountain States Telephone and Telegraph Company runs through the town of Alexander at which point connection can be made by applicant for outside and long distance communication.

Copy of the applicant's articles of incorporation was filed with its petition and maps in triplicate showing the locality and route of its proposed lines and system.

Notices of the application of the aforesaid corporation were served upon The Mountain States Telephone and Telegraph Company, upon the Soda Springs-Lago Company and on the Smith Telephone Company. On April 24, 1914, the Soda Springs-Lago Telephone Company filed an answer to the petition of the applicant, in which many charges are made against the Gem Valley Telephone Company to the effect that it is being organized for the purpose of forcing the Soda Springs-Lago Telephone Company out of business, and it prays that the petition of the Gem Valley Telephone Company be disregarded and that it be required to purchase the stock of the Soda Springs-Lago Company at such price as is just and equitable.

In view of the several applications filed as aforesaid, and the protest of the Soda Springs-Lago Telephone Company, it was deemed advisable by the Commission that the applications and protest be heard at the same time and fixed at Soda Springs, Idaho, on the twenty-eighth day of April, 1914, at the hour of 10.00 o'clock A. M., as the place and time for hearing said application and protest, and all the parties interested were so advised.

On the twenty-second day of April, 1914, by order of the

Commission duly made and entered, I was duly designated as the Commissioner to hear the investigations and inquiry involved in said applications and protest, with power to make such findings, orders or decisions as might appear to be just and reasonable, and when the same were so made to present them to the Commission for approval and confirmation.

At the time and place designated for the hearing the matter came on regularly to be heard before me as such Commissioner. *Carl Barnard, Esq.*, appeared on behalf of the Gem Valley Telephone Company; *William Smith* and *J. W. Smith* appeared on behalf of the Smith Telephone Company; *Ed. M. Merrill*, secretary and treasurer of the Soda Springs-Lago Telephone Company appeared on behalf of said company.

At the beginning of the hearing Mr. E. D. Whitman, president of the Soda Springs-Lago Telephone Company, made a statement that his company had reached a satisfactory settlement with the Gem Valley company and that the protest it had filed against the Gem Valley Telephone Company might be withdrawn and not further considered by the Commission.

The Smith Telephone Company then proceeded to submit testimony on their application aforesaid. William Smith and J. W. Smith and McGee Harris were called, sworn and examined on behalf of the said applicant, the Smith Telephone Company. At the close of this testimony the respective parties announced to the Commissioner that they had reached an agreement as to the territory which each might enter with its telephone system, and if the Commission would consent to it, a stipulation might be entered, and that certificates of public convenience and necessity might be issued to them respectively in accordance with the said stipulation.

Whereupon the stipulation was made before the Commissioner and carefully read in the presence of the respective parties from the shorthand notes of the stenographer taking the testimony, which said stipulation is as follows:

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"It is hereby stipulated, by and between the Gem Valley Telephone Company and the Smith Telephone Company, that the Smith Telephone Company will extend their present system so that it will embrace or take in what is known as Whiskey Creek and extend as far north so as to take in and include in said system the residence and premises of James Swenson; and the territory beyond, lying northeast of said residence and premises of James Swenson, shall be embraced within the territory and be included in the extension of the system of the Gem Valley Telephone Company. The Smith Telephone Company will further extend from what is now known as the Joseph Fowler Ranch, and running northeasterly to the Sorenson Brothers' Ranch, thence due easterly to the mountains; and the territory lying south of said last described line, north and east, shall be included in the territory to which the extension of the Gem Valley Telephone Company shall be made. The Smith Telephone Company may extend their line and embrace the territory lying west of Bear River and known as Cove; and the Gem Valley Telephone Company will occupy all the territory on the east side of Bear River, and also the west side of the river between Turner and Cove. It is further agreed that the Smith Telephone Company may occupy the territory a mile and a half east of the William Larkin Bridge, over Bear River, then running southeast along the brow of the hill, four miles, to the old Fred Collins Ranch; and the Gem Valley Telephone Company will occupy the field lying north of the lines last above described."

Whereupon the further taking of testimony was discontinued and the investigation closed.

I, therefore, submit the following order:

ORDER.

William Smith, A. T. Smith, and J. W. Smith, partners doing business under the firm name and style of the Smith Telephone Company, having applied to this Commission for certificate that the present and future public convenience and necessity require the construction by them of a telephone pole line and system between certain points and in certain localities in Bannock County, State of Idaho; and the Gem Valley Telephone Company having also applied to this Commission for a certificate that the present and future convenience and necessity require the construction by it of a telephone pole line and system between certain points and in certain localities in Bannock County, State of Idaho; the hearing having been held on said applications and the said applicants having stipulated as to the

territory and localities to which and in which they shall respectively construct said pole line and telephone system.

And the Commission being fully advised in the premises, the Commission hereby finds as a fact that the public convenience and necessity will be served by the granting of the application of the respective parties in so far as the same applies to the locality and points agreed upon and stipulated by said parties.

It is, therefore, ordered, That the said applicants, William Smith, A. T. Smith, and J. W. Smith, doing business under the firm name and style of the Smith Telephone Company be, and they are hereby, granted a certificate that the present and future public convenience and necessity require and will require the construction and maintenance by them of a pole and wire line for telephonic communication between the following points in the following localities in Bannock County, State of Idaho, to wit:

To embrace and take in what is known as Whiskey Creek and extend as far north so as to take and include in said system the residence and premises of James Swenson; to further extend from what is now known as the Joseph Fowler Ranch running northeasterly to the Sorensen Brothers' Ranch, thence due easterly to the mountains; to extend and embrace the territory lying west of Bear River and known as Cove; to extend and occupy the territory a mile and a half east of the William Larkins Bridge over Bear River, thence running southeast along the brow of the hill four miles to the old Fred Collins Ranch, all in Bannock County, State of Idaho.

It is further ordered, That the Gem Valley Telephone Company be, and it is hereby, granted a certificate that the present and future public convenience and necessity require, and will require, the construction and maintenance by it of a pole and wire line for telephonic communication between the following points in the following locations, to wit:

It may extend its present system so that it will take in and embrace the territory lying beyond and northeast of

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the residence of James Swenson; to take in and embrace the territory lying south of the following line, north and east, a line extending from what is known as the Joseph Fowler Ranch, running northeasterly to the Sorenson Brothers' Ranch, thence due easterly to the mountains; to embrace and take in all of the territory lying on the east side of Bear River and also on the west side of Bear River between Turner and Cove; also to take in and embrace all of the territory lying north of the following lines, a mile and one-half east of the William Larkins Bridge over Bear River, then running southeast along the brow of the hill four miles to the old Fred Collins Ranch.

It is further ordered, That in order that the territory allotted to the respective applicants in which a certificate is herein granted may be defined more accurately, the said applicants prepare and file with the Commission within thirty days from the date of service of the order herein, a map approved and signed by them respectively and showing the metes and bounds of the territory allotted to them respectively by sections or township lines according to government surveys or by natural monuments located within the territory so well recognized as to be beyond dispute.

It is further ordered, That the aforesaid applicants, during the construction of the pole and wire lines aforesaid and the installation of telephones upon the system to be constructed by them respectively, keep a true and accurate account of all expenditures made in the construction thereof and in the installation thereof, and immediately after the completion of the same, they each of them file with the Commission an accurate account of said cost and expenditures.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Public Utilities Commission of the State of Idaho.

Dated at Boise, Idaho, this, the sixteenth day of May, 1914.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO FILE AND PUT INTO EFFECT, ON LESS THAN STATUTORY NOTICE, A CHANGE IN RATES FOR ALL EXCHANGES IN THE STATE OF IDAHO.

Case No. 58—Order No. 111.

Granted May 19, 1914.

Rate for Extra Directory Listing.

ORDER.

The Pacific Telephone and Telegraph Company of San Francisco, California, through its vice-president, H. D. Pillsbury, on May 14, 1914, filed with the Public Utilities Commission of the State of Idaho, the application of said telephone and telegraph company for permission to publish and put into effect its schedule providing a rate for extra listing in its telephone directory within the State of Idaho.

The petition further sets forth that the rate now provided by the schedule of said company, Form K-934, for all exchanges in Idaho of less than 1,000 stations is 50 cents per month, and that said schedule does not provide a rate for extra listing in exchanges of over 1,000 stations. And it is the desire of the applicant to provide a rate for all listings of 25 cents per month, provided the person so listed is a member of same firm.

And it appearing to the Commission that by permitting such change mentioned in said application, a uniform system of such rates to be charged will result, and that no discrimination will occur by reason thereof, and that the rate mentioned in said application is a reduction in the rates heretofore charged by said applicant, and that the public will be benefited by reason of such change; and there being reasonable grounds why a change in such rate should be permitted on less than statutory notice required therefor;

It is, therefore, ordered, That the applicant, The Pacific Telephone and Telegraph Company, be, and it is hereby, permitted to file its schedule presented in said application,

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designated as General Supplemental Rate Schedule No. 15, P. U. C. I. No. 2, the same to become effective on the twenty-fifth day of May, 1914, and to continue in force and effect until further order of the Commission in the premises.

It is further ordered, That the said applicant, The Pacific Telephone and Telegraph Company do post in all of its stations in the State of Idaho where it is now transacting business, a notice of such change of rate, as herein designated, for a period of thirty days from and after it receives notice of this order, and that it keep within said offices for public inspection a copy of its schedule containing such change in rates.

Done in Boise, Idaho, this, the nineteenth day of May, 1914.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO CHANGE, ON LESS THAN STATUTORY NOTICE, THE RATE FOR HEAD RECEIVERS.

Case No. 59—Order No. 112.

Granted May 19, 1914.

Rate for Head Receivers.

ORDER.

On the fourteenth day of May, 1914, The Pacific Telephone and Telegraph Company, through its vice-president, H. D. Pillsbury, made application to the Public Utilities Commission of the State of Idaho for permission to change on less than statutory notice, the rate for a head receiver, as now provided by its General Supplemental Rate Schedule No. 15.

The application shows that the rate heretofore charged by said applicant is 50 cents per month for said head receiver, and the desire of the applicant is to change the rate to 25 cents, and the Commission, having duly considered the same, and, it appearing that such change in rate will cause a reduction in the rate for head receivers, and that no

discrimination will be caused thereby, and that the general public will be benefited by reason of such change, and good and sufficient grounds being shown why such application should be allowed on less than statutory notice;

It is, therefore, ordered, That the applicant, The Pacific Telephone and Telegraph Company, be, and it is hereby, permitted to file with the Commission its schedule to be designated as General Supplemental Rate Schedule No. 19, P. U. C. I. No. 2, showing the reduction in the rate for head receivers as provided in said schedule, the same to become effective on the twenty-fifth day of May, 1914, and to continue in force and effect until further order in the premises.

It is further ordered, That the said applicant, The Pacific Telephone and Telegraph Company, do post in all of its stations in the State of Idaho, where it is now transacting business, a notice of such change in rates, as herein designated, for a period of thirty days from and after it receives notice of this order, and that it keep within said offices for public inspection a copy of its schedule containing such change in rates.

Done in open session at Boise, Idaho, this, the nineteenth day of May, 1914.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY TO MAKE A CHANGE, UPON LESS THAN STATUTORY NOTICE, IN ITS SUPPLEMENTAL RATE SCHEDULE No. 14, AMENDING SAME IN THE FOLLOWING WORDS: "MESSENGER AND 'OTHER LINE' CHARGES EXCEPTED."

Case No. 60—Order No. 113.

Granted May 19, 1914.

Commissions on Messenger and "Other Line" Charges—Amendment of Rate Schedule so as to Conform with Practice of Company.

ORDER.

The Pacific Telephone and Telegraph Company, on the eighteenth day of May, 1914, through its vice-president, H.

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D. Pillsbury, filed with the Public Utilities Commission of the State of Idaho, its application for permission to file and publish, on less than statutory notice, a change in its Supplemental Rate Schedule No. 14, by inserting in the first paragraph of same the following words "messenger and 'other line' charges excepted," from which application it appears that the present Supplemental Rate Schedule No. 14 provides for the payment of commissions on local and long distance messages, and it is not the present practice to pay a commission on messenger and "other line" charges, as these amounts are not a part of the revenue, but are remitted to the person performing the service for which charge is made.

The application further sets forth that, by inserting said words, the schedule will then conform to the present practice of the company, and will be more definite in respect to its charges and rates, and that the public will not be affected thereby except in so far as being advised of the practice of the company in such respects; and sufficient grounds having been shown why said modification in said schedule should be permitted on less than statutory notice therefor;

It is, therefore, ordered, That the said applicant, The Pacific Telephone and Telegraph Company, be, and it is hereby, permitted to amend its said General Supplemental Rate Schedule No. 14, P. U. C. I. No. 2 in the manner aforesaid, the same to become effective on May 25, 1914, and to continue in force and effect until further order in the premises.

It is further ordered, That the said applicant, The Pacific Telephone and Telegraph Company, do post in all of its stations in the State of Idaho where it is now transacting business a notice of such change in rates, as herein designated, for a period of thirty days from and after it receives notice of this order, and that it keep within said offices for public inspection a copy of its schedule containing such change in rates.

Done in open session at Boise, Idaho, this, the nineteenth day of May, 1914.

ILLINOIS.

State Public Utilities Commission.

RULES GOVERNING THE CONSTRUCTION OF TELEPHONE, TELEGRAPH AND OTHER FORMS OF ELECTRIC TRANSMISSION LINES ACROSS SIMILAR LINES AND TRACKS OF RAILROAD AND STREET RAILROAD COMPANIES.

Adopted and Effective April 2, 1914.

Regulations as to Crossings.

UNDER CROSSINGS.

CONDUCTORS.

SECTION 1. (a) *Through Embankments and Cuts.*—In crossing under the tracks of any railroad or street railroad company located on embankments or in cuts, the manner of crossing preferably should be by means of a conduit, the top of which is located not less than 3 feet 6 inches below the base of rail, and surrounded by six inches of concrete. Other means of crossing without the use of conduits will be considered when satisfactorily demonstrated as to insulation and durability.

(b) *Crossing under Structures.*—Wire or cable conductors crossing underneath the tracks of any railroad or street railroad company when attached to supports suspended from structures, must have the same amount of clearance provided for in Section 5, depending upon the voltage carried. So far as practicable each conductor must be thoroughly insulated at the point of support, and the character of construction must be such as to meet all practical and reasonable demands.

OVERHEAD CROSSINGS.

TROLLEY CONTACT WIRES.

SECTION. 2. (a) *Minimum Clearances.*—The minimum vertical clearances of trolley contact wires crossing over tracks shall not be less than 22 feet.

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(b) *Length of Spans.*—In the span type of construction spans greater than 100 feet in length should be avoided where possible. Spans of the catenary or bracket type of construction should not exceed 140 feet in length. In each case the poles supporting the trolley contact wires must be of substantial character.

Where the catenary type of construction is in use, the messenger wire supports shall not be more than 15 feet apart.

(c) *Guys.*—In either form of construction each pole supporting trolley contact wires must be guyed in each direction from the tracks forming the crossing; in addition to this each trolley wire or each set of trolley wires must be equipped with horizontal strain guys, one end of each strain guy to be attached to the trolley contact wire and the remote end of each guy line to be attached to anchor poles located on either side of the electric line. Each anchor pole shall be guyed in two directions to overcome the resultant produced by the strain guy line.

(d) *Strain Insulators.*—Strain insulators will be allowed on lines carrying less than 5,000 volts, but when not so equipped, the guys must be thoroughly grounded to permanently damp earth.

Strain insulators must not be used in guys on lines carrying more than 5,000 volts. The guys on lines carrying more than 5,000 volts must be thoroughly grounded to permanently damp earth.

(e) *Trolley Guards.*—Unless the tracks forming the grade crossing are interlocked, each trolley contact wire shall be equipped with a trolley guard of an approved pattern. The remote ends of each trolley guard shall be located at respective points on each side of the crossing, a distance equivalent to the length of the longest trolley car operated, plus 15 feet measured from the nearest rail on either side of the crossing. The poles supporting the trolley guard must be installed and equipped in the same manner provided for poles supporting trolley contact wires.

TELEPHONE, TELEGRAPH AND SIGNAL CIRCUITS.

SECTION 3. (a) *Clearances*.—The minimum vertical clearance of all telephone, telegraph and signal circuits carrying not to exceed 550 volts, crossing over tracks and conductors shall not be less than the following:

Railroad tracks	25 feet
Telephone, telegraph and signal circuits when all wires forming such crossing are insulated.....	2 feet
Telephone, telegraph and signal circuits when one or more wires forming such crossing are not insulated.....	4 feet
Low tension lines carrying less than 5,000 volts.....	5 feet

(b) *Crossing High Tension Lines*.—Except in special cases, no telephone, telegraph or signal circuits will be permitted to cross over high tension lines.

In case of crossing the right of way of a railroad or street railroad company on which is installed a low tension line and a high tension line, the plan for crossing with the telephone, telegraph and signal circuits must provide for raising the high tension line a sufficient distance to permit of crossing underneath it with a minimum vertical clearance of not less than 8 feet, and over the low tension line with a minimum vertical clearance of not less than 5 feet.

(c) *Location of Poles*.—Preferably, supporting poles of telephone, telegraph and signal circuits should be located outside of the right of way of railroad and street railroad companies.

(d) *Clearance of Poles*.—When it is necessary to locate supporting poles on the right of way of the railroad company, they should not be less than 8 feet from nearest rail of any track, except in the case of team tracks where a sufficient distance must be left for a driveway.

(e) *Length of Spans*.—When it is practicable the crossing span should not exceed 125 feet in length, but in no case shall it exceed 175 feet. When the length of crossing span exceeds 125 feet, the adjoining spans should not exceed 110 feet.

(f) *Guys*.—Poles supporting the crossing span must be

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braced or guyed. When guyed the supporting poles must be side-guyed in both directions, if practicable, and be head-guyed away from the crossing.

(g) *Cross-Arms*.—Double cross-arms shall be used on all poles supporting the crossing spans and shall be so attached as to be maintained at right angles to the poles. Braces must be attached to at least one of each pair of double cross-arms.

(h) *Insulators*.—Each insulator shall be of such pattern and design that when mounted it will withstand without injury, or without being pulled off the pin, the maximum stress to which it will be subjected with conductor attached, under the most unfavorable conditions of temperature and loading.

(i) *Wire*.—No joint or splice shall be permitted in any of the crossing spans. The line wires in the crossing span and in the next adjoining span on each side thereof, shall be of galvanized iron, hard drawn copper, or of copper covered steel of specifications of reasonable requirements. Iron wire shall not be used where the exposure to corrosive influences is materially greater than that resulting from the action of the natural elements. The minimum size of wire which may be used at any crossing shall be as given in the following table:

<i>Length of crossing span</i>	<i>Galvanized iron wire</i>	<i>Hard drawn copper wire</i>
150 feet or less.....	No. 10 B. W. G.....	No. 10 B. & S.....
151 feet to 175 feet..	No. 8 B. W. G.....	No. 9 B. & S.....

Twisted pair wire, when not supported by messenger wire, shall be of hard drawn tinned copper, not smaller than No. 14 B. & S. gauge, or of tinned copper covered steel of specifications of reasonable requirements, not smaller than No. 17 B. & S. gauge. In no case shall twisted pair wire be used in spans longer than 100 feet without a messenger wire support.

Each wire shall be attached to each insulator of its pair upon the double arm. The minimum sag of wires in crossing spans shall correspond to the span length and the tem-

perature at which it is strung, as specified in the following table:

Length of span	100° F. (inches)	80° F. (inches)	60° F. (inches)	40° F. (inches)	20° F. (inches)	0° F. (inches)	-20° F. (inches)
75 feet.....	4½	3	2½	2	2	1½	1
100 feet.....	7	5½	4½	4	3	2½	2
115 feet.....	9	7	5½	4½	3½	3	2½
125 feet.....	11	8½	7	6	5	4	3½
150 feet.....	14	11½	9	7½	6½	5½	5
175 feet.....	18	15	12	10	9	7½	6½

(j) *Cables*.—Galvanized steel stranded cable having a breaking strength of not less than 6,000 pounds shall be used to support conductor cable of fifty pairs of No. 19 B. & S. gauge copper wire or its equivalent and smaller, if not less than 10,000 pounds breaking strength for pairs in excess thereof up to 100 pairs No. 19 B. & S. gauge copper wire or its equivalent, and not less than 16,000 pounds breaking strength for larger sizes. Cables shall be suspended with minimum sag as follows:

Span in feet	Minimum sag in inches
80 or less	16
90	20
100	22
110	26
120	30
130	34
140	40
150	44
175	62

(k) *Wire Loads*.—Each aerial telegraph, telephone or signal wire shall be counted as one wire without regard to size or kind up to, and including No. 8 B. W. G. Wires of larger size shall be considered as the number of No. 8 B. W. G. copper wires to which they are equivalent in weight. The number of aerial wires equivalent to a cable shall be determined by multiplying the circumference of the cable in inches by 3.

Each twisted pair shall be considered as one wire and each messenger wire supporting twisted pair wiring shall be considered as one wire. Not more than two messenger

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wires shall be attached to either pole of the crossing span.

(1) *Character of Construction.*—All material used in the construction of crossing spans must be of substantial character and installed in accordance with the best practice.

LOW TENSION POWER AND LIGHT LINES.

SECTION 4. (a) *Clearances.*—The minimum vertical clearances of all low tension power and light lines carrying 550 volts and under, when crossing over tracks shall be not less than twenty-five feet. In all other respects the minimum vertical clearances of low tension power and light lines carrying 550 volts and under shall be the same as the distances designated for lines carrying over 550 volts and under 5,000 volts, which are as follows:

Railroad tracks	30 feet
Telephone, telegraph and signal circuits.....	5 feet
Trolley contact wires	8 feet
Low tension lines carrying less than 5,000 volts.....	5 feet
High tension lines carrying 5,000 volts and over.....	8 feet

(b) *Requirements.*—In so far as these may be applicable, the requirements specified for character of construction for high tension lines, will govern.

HIGH TENSION POWER AND LIGHT LINES.

SECTION 5. (a) *Clearances.*—The minimum vertical clearances of all high tension lines carrying 5,000 volts and over, crossing over tracks and conductors, shall not be less than the following:

Railroad tracks	30 feet
Telephone, telegraph and signal circuits.....	8 feet
Trolley contact wires	8 feet
Low tension lines carrying less than 5,000 volts.....	8 feet
High tension lines carrying 5,000 volts and over.....	8 feet

(b) *Location of Poles.*—Preferably, supporting poles or towers of high tension lines should be located outside of the

right of way of the railroad company. So far as it is practicable to do so, the poles or towers supporting the crossing span and the adjoining span on each side shall be in a straight line.

(c) *Clearance of Poles or Towers.*—When it is necessary to locate supporting poles or towers on the right of way of a railroad or street railroad company, they should not be less than 12 feet from nearest rail of any main track and 8 feet from nearest rail of any side track, except in the case of team tracks where a sufficient distance must be left for a driveway.

(d) *Length of Spans.*—Unusually long crossing spans must be avoided wherever practicable. Except in special cases all high tension lines must cross over lines carrying less voltage.

(e) *Guys.*—Wooden poles supporting the crossing span shall be side-guyed in both directions, if practicable, and be head-guyed away from the crossing span. The next adjoining poles shall be head-guyed in both directions. Braces may be used instead of guys.

(f) *Insulators.*—Strain insulators will be allowed on lines carrying less than 5,000 volts, but when not so equipped, the guys must be thoroughly grounded to permanently damp earth.

Strain insulators must not be used in guys on lines carrying more than 5,000 volts. The guys on lines carrying more than 5,000 volts must be thoroughly grounded to permanently damp earth.

(g) *Grounding.*—For voltage over 5,000 volts, wooden cross-arms, if used, shall be provided with a grounded metallic plate on top of the arm, which shall be not less than one-eighth inch in thickness and which shall have a sectional area and conductivity not less than that of the line conductor. Metal pins shall be electrically connected to this ground. Metal poles and metal arms on wooden poles shall be grounded.

The electrical conductivity of the ground conductor shall be adjusted to the short-circuit current capacity of the sys-

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tem and shall be not less than that of a No. 4 B. & S. gauge copper wire.

(h) *Conductors*.—The separation of conductors carrying alternating current, supported by pin insulators for spans not exceeding 150 feet shall be not less than:

<i>Line voltage</i>	<i>Separation (inches)</i>
Not exceeding 6,600 volts.	14 $\frac{1}{2}$
Exceeding 6,600 but not exceeding 14,000.	24
Exceeding 14,000 but not exceeding 27,000.	30
Exceeding 27,000 but not exceeding 35,000.	36
Exceeding 35,000 but not exceeding 47,000.	45
Exceeding 47,000 but not exceeding 70,000.	60

For spans exceeding 150 feet the pin spacing should be increased, depending upon the length of the span and the sag of the conductors, but this requirement does not apply to wires of the same phase or polarity between which there is no difference of potential.

With constant potential, direct current circuits, not exceeding 750 volts, the minimum spacing shall be 10 inches.

When supported by insulators of the disc or suspension type, the crossing span and the next adjoining spans shall be dead ended at the poles or towers, supporting the crossing span so that at these poles or towers, the insulators shall be used as strain insulators.

The clearance in any direction between the conductors nearest the pole or tower, and the pole or tower shall not be less than:

<i>Line voltage</i>	<i>Clearances (inches)</i>
Not exceeding 14,000 volts.	9
Exceeding 14,000 but not exceeding 27,000.	15
Exceeding 27,000 but not exceeding 35,000.	18
Exceeding 35,000 but not exceeding 47,000.	21
Exceeding 47,000 but not exceeding 70,000.	24

No form of conductor shall be spliced in the crossing span nor in the adjoining span on either side. The normal mechanical tension in the conductors generally shall be the same in the crossing span and in the adjoining span on each

side, and the difference in length of the crossing and adjoining spans generally, shall not be more than 50 per cent. of the length of the crossing span.

The method of supporting the conductors at the poles or towers, shall be such as to hold the wires under maximum loading to the supporting structures in case of shattered insulators or wires broken or burned at an insulator, without allowing an amount of slip which would materially reduce the clearance specified in Paragraph "a" of Section No. 5.

(i) *Temperature*.—In the computation of stresses and clearances, and in erection, provision must be made for a variation in temperature from 20 degrees Fahrenheit to plus 120 degrees Fahrenheit. A suitable modification in the temperature requirements shall be made for territory in which the above limits would not fairly represent the extreme range of temperature.

(j) *Loads*.—The conductors shall be considered as uniformly loaded throughout their length, with a load equal to the resultant of the dead load plus the weight of a layer of ice one-half of one inch in thickness, and a wind pressure of 8.0 pounds per square foot on the ice-covered diameter, at a temperature of 0 degrees Fahrenheit. The weight of ice shall be assumed at 57 pounds per cubic foot (0.033 pounds per cubic inch).

Insulators, pins and conductor attachments shall be designed to withstand, with the designated factor of safety, the tension in the conductors under the maximum loading.

The poles or towers shall be designed to withstand, with the designated factor of safety, the combined stresses from their own weight, the wind pressure on the pole or tower, and the above wire loading on the crossing span and the next adjoining span on each side. The wind pressure on the poles or towers shall be assumed at 13 pounds per square foot on the projected area of solid or closed structures and on one and one-half times the projected area of latticed structures.

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The poles or towers shall also be designed to withstand the loads specified in above paragraph combined with the unbalanced tension of:

- 2 broken wires for poles or towers carrying 5 wires or less.
- 3 broken wires for poles or towers carrying 6 to 10 wires.
- 4 broken wires for poles or towers carrying 11 or more wires.

Cross-arms shall be designed to withstand the loading specified for poles or towers combined with the unbalanced tension of one wire broken at the pin farthest from the pole.

The poles or towers may be permitted a reasonable amount of deflection under the specified loading, provided that such deflection does not reduce the clearances specified for aerial crossings over existing wires, more than 25 per cent. or produce stresses in excess of those specified in Paragraph "1."

(k) *Factors of Safety*.—The ultimate unit stress divided by the allowable unit stress shall be not less than the following:

Wire and cables.....	2
Pins	2
Insulators, conductor attachments, guys.....	3
Wooden poles and cross-arms.....	6
Structural steel	3
Reinforced concrete poles and cross-arms.....	4
Foundations	2

Insulators for line voltage of less than 9,000 shall not flash over at four times the normal working voltage, under a precipitation of water of one-fifth of an inch per minute, at an inclination of 45 degrees to the axis of the insulator.

Each separate part of a built-up insulator for line voltages over 9,000 shall be subject to the dry flash-over test of that part for five consecutive minutes.

Each assembled and cemented insulator shall be subjected to its dry flash-over test for five consecutive minutes.

The dry flash-over test shall be not less than:

<i>Line voltage</i>	<i>Test voltage</i>
Exceeding 9,000 but not exceeding 14,000.....	65,000
Exceeding 14,000 but not exceeding 27,000.....	100,000
Exceeding 27,000 but not exceeding 35,000.....	125,000
Exceeding 35,000 but not exceeding 47,000.....	150,000
Exceeding 47,000 but not exceeding 60,000.....	180,000
Exceeding 60,000	•

Each insulator shall further be so designed that, with excessive potential, failure will first occur by flash-over and not by puncture.

Each assembled insulator shall be subjected to a wet flash-over test, under a precipitation of water of one-fifth of an inch per minute, at an inclination of 45 degrees to the axis of the insulator.

The wet flash-over test shall be not less than:

<i>Line voltage</i>	<i>Test voltage</i>
Exceeding 9,000 but not exceeding 14,000.....	40,000
Exceeding 14,000 but not exceeding 27,000.....	60,000
Exceeding 27,000 but not exceeding 35,000.....	80,000
Exceeding 35,000 but not exceeding 47,000.....	100,000
Exceeding 47,000 but not exceeding 60,000.....	120,000
Exceeding 60,000	†

Test voltages above 35,000 volts shall be determined by the A. I. E. E. Standard Spark-Gap Method.

Test voltages below 35,000 volts shall be determined by transformer ratio.

(1) *Working Unit Stresses*.—Obtained by dividing the ultimate breaking strength by the factors given under Paragraph “k.”

* Three times line voltage.

† Twice the line voltage.

WORKING UNIT STRESSES.		Pounds per square inch
<i>Structural steel:</i>		
Tension (net section).....		18,000
Shear.....		14,000
Compression.....		18,000— $80\frac{1}{2}$
<i>Rivets, pins:</i>		
Shear.....		10,000
Bearing.....		20,000
Bending.....		20,000
<i>Bolts:</i>		
Shear.....		8,500
Bearing.....		17,000
Bending.....		17,000
<i>Wires and cables:</i>		
Copper, hard-drawn, solid, B. & S. gauge, 4/0, 3/0, 2/0		25,000
Copper, hard-drawn, solid, B. & S. gauge, 1/0.....		27,500
Copper, hard-drawn, solid, B. & S. gauge, No. 1.....		28,500
Copper, hard-drawn, solid, B. & S. gauge, No. 2, 4, 6..		30,000
Copper, soft-drawn, solid, B. & S. gauge.....		17,000
Copper, hard-drawn, stranded.....		30,000
Copper, soft-drawn, stranded.....		17,000
Aluminum, hard-drawn, stranded, B. & S. gauge under 4/0.....		12,000
Aluminum, hard-drawn, stranded, B. & S. gauge 4/0 and over.....		11,500
		Compression (lbs. per sq. in.)
		$\frac{1}{80D}L^*$
<i>Untreated timber</i>		
Eastern white cedar.....	600	600
Chestnut.....	850	850
Washington cedar.....	850	850
Idaho cedar.....	850	850
Port Orford cedar.....	1,150	1,150
Long-leaf yellow pine.....	1,100	1,100
Short-leaf yellow pine.....	950	950
Douglas fir.....	1,000	1,000
White oak.....	950	950
Red cedar.....	700	700
Bald cypress (heartwood).....	800	800
Redwood.....	850	850
Catalpa.....	500	500
Juniper.....	550	550

* L: Length in inches.

† D: Least side, or diameter, in inches.

(m) *Character of Construction.*—The character of the material entering into the construction of crossing spans and the installation of same must conform to modern practice.

GENERAL REQUIREMENTS.

SECTION 6. (a) *Conductors.*—By the term conductor, circuit, or cable as used in these rules is meant any metal conductor whatsoever used as a means of transmitting electric current.

(b) *Cradles.*—Cradles or slatted platforms will not be permitted in connection with the aerial crossing of any line. It is the intent and purpose of these rules to require the construction of the crossing spans to be of such substantial character as to make the use of cradles or platforms unnecessary.

(c) *Clearances.*—The minimum vertical clearances herein specified shall mean to be the least clearance permitted under the most unfavorable conditions with respect to temperature and loading.

(d) *Warning Signs.*—To each pole supporting any crossing span with conductors carrying over 550 volts, shall be attached a warning sign with letters not less than four (4) inches in height, reading:

“ Danger — Electric Wires..... Volts,” stating the normal voltage carried by the conductor.

(e) *Applications and Petitions.*—For all telephone, telegraph and signal circuits carrying not to exceed 550 volts, and low tension power and light lines carrying not to exceed 550 volts, an application in writing must be filed with the Commission for each crossing where it is necessary to span the tracks or conductors of other utility companies. Each application shall be accompanied by three sets of drawings made up in the manner hereinafter described.

If the plans accompanying the application and the method of proposed construction are in accordance with the rules and requirements of the Commission, and there is no objection by the corporation or person whose tracks

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or metal conductors are crossed, and the Commission sees no objection to the location of the proposed crossing, a certificate will be issued by the chief engineer of this Commission permitting the construction of same. If objection is made to the manner and location of the proposed crossing, the Commission will consider the application as a petition and may, if it sees fit, set the case for hearing, to the end that the parties concerned may be fully heard.

For all low tension power and light lines exceeding 550 volts, and all high tension power and light lines, a petition must be filed for each crossing, accompanied by as many copies as there are respondent companies mentioned in said petition, and filed with the secretary of the Commission at Springfield, Illinois. If an agreement is reached between the parties as to location of the proposed crossing, and no contest is likely, an order permitting the proposed crossing may be entered, provided the Commission sees no objection to the proposed crossing and the plans of construction are in accordance with the rules herein. Each petition must be accompanied by three drawings and each duplicate petition by one drawing.

(f) *Drawings*.—Drawings accompanying each petition should show the location and plan of proposed crossing, and vertical section of all tracks, wires and other physical characteristics within the limits of said crossing, which shall include the location of the poles supporting the crossing span and the adjoining spans; the number, kind and size of conductors; clearances proposed and such additional details as will indicate as clearly as possible the character of construction. All of this data must be embodied in one drawing, preferably on sheets 8½ inches in width by 11 inches in length, or multiples thereof.

Adopted by the Commission and effective April 2, 1914.

IN THE MATTER OF THE APPLICATION OF THE HUTSONVILLE
TELEPHONE COMPANY, HUTSONVILLE, ILLINOIS, FOR AU-
THORITY TO CHANGE RATES.

No. 2259.

Granted April 28, 1914.

**Increase in Exchange Rates Granted—Reduction of Rural Rates at
Request of Company.**

OPINION AND ORDER.

On March 12, 1914, the Hutsonville Telephone Company of Hutsonville, Illinois, filed with the Commission application for authority to change rates. The applicant is a corporation organized and doing business under the laws of the State of Illinois and is a public utility engaged in the operation and management of a telephone system in and around the village of Hutsonville.

Hearing was held at the office of the Commission at Springfield, Illinois, on Wednesday, April 23, 1914. *Mr. Arthur E. Newlin*, secretary and general manager of the company, appeared for the applicant. No one appeared objecting.

The application sets forth that the rates in effect on July 1, 1913, were not sufficient to maintain the telephone system and the standard of service that was furnished, and asks authority to change the rate for all service furnished in the village of Hutsonville from \$1.00 per month to \$1.25 per month and for all rural line service from \$1.35 and \$1.50 per month to \$1.25 per month, also to discontinue "free" service between Hutsonville and Robinson and make the charge 10 cents for this service to all parties.

It appeared from the testimony offered at the hearing that the changes of rates were actually made effective as of November 1, 1913, and that no objection was made by any of the company's patrons, and that the rates in effect prior to November 1, 1913, were insufficient to meet the operating expenses of the company. It also appeared that the change in the rate for rural line service was more in the form of a readjustment of rates, as no standard rate had been fixed prior to November 1, 1913.

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It further appeared from the testimony that the charge of 10 cents for service between Hutsonville and Robinson is fixed by the Commercial Telephone and Telegraph Company of Olney, Illinois, which company operates a general system of toll lines throughout the southeastern part of the State, and that this rate is included in the schedule of rates of the Commercial Telephone and Telegraph Company filed with the Commission; and for that reason that part of the application pertaining to the Hutsonville-Robinson toll rate is not considered in this order. No data was offered from which the Commission could determine the operating revenue and operating expenses of the Company, but in the light of the facts as shown by the application and the testimony presented at the hearing, it appears that the proposed changes in rates are fair and reasonable and that such increase is justified.

Accordingly, it is ordered, That effective as of November 1, 1913, the rates for all classes of service furnished by the Hutsonville Telephone Company in the village of Hutsonville, Illinois, shall be \$1.25 per month and for all rural line service furnished to subscribers in the vicinity of Hutsonville, the rate shall be \$1.25 per month.

By order of the Commission, this twenty-eighth day of April, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF MACOUPIN COUNTY
TELEPHONE COMPANY FOR CONFIRMATION OF RATES,
RULES AND REGULATIONS.

No. 2323.

Granted May 1, 1914.

**Increase of Rates for Rural Service upon Replacement of Grounded Circuit
by Metallic Circuit — Payment of Rental in Advance.**

OPINION AND ORDER.

The application filed herein shows that two competing telephone systems of the city of Carlinville, Illinois, were

acquired and consolidated by the petitioner; that the entire system was rebuilt; and that the city exchange was rebuilt and new classification of rates and service was in effect before July 1, 1913.

The application further shows that the county lines were rebuilt and changed from grounded to metallic lines during the summer of 1913; that the rate for rural lines on July 1, 1913, was \$1.00 per month, and on January 1, 1914, was increased to \$1.50 per month, payable quarterly in advance on or before the fifteenth day of the second month of the quarter in which the service was rendered; and that the change in rates and service has met with satisfaction and approval of its patrons. On April 22, 1914, the cause came on for hearing at the offices of the Commission at Springfield, Illinois. *C. B. Cheadle*, secretary of petitioner, and *Ben B. Boynton*, attorney for petitioner, appeared in support of petition. No one appeared in opposition.

The Commission, having heard the testimony and being fully advised in the premises, finds that under all of the facts and circumstances in this case the above rate for rural service is reasonable and just.

The Commission further finds that the rule of petitioner requiring payment quarterly in advance on or before the fifteenth day of the second month of the quarter in which the service is rendered is a reasonable regulation.

It is, therefore, ordered, That the petitioner herein be, and it hereby is, authorized to change the rate of charge for rural lines from \$1.00 per month to \$1.50 per month.

It is further ordered, That the above change in rate shall become effective from and after the tenth day of May, 1914, and that the petitioner shall publish the change in said rate schedule as provided by law.

By order of the Commission, this first day of May, 1914.

Dated at Springfield, Illinois.

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IN THE MATTER OF THE HOME TELEPHONE COMPANY OF DOUGLAS COUNTY, ILLINOIS, FOR AUTHORITY TO CHANGE RATES.

No. 2235.

Decided May 5, 1914.

Change in Rates — Elimination of Discrimination between Stockholders and Non-Stockholders.

OPINION AND ORDER.

Now comes the Home Telephone Company of Douglas County, Illinois, and files its application with this Commission for authority to change rates.

And this Commission having heard the evidences in the case at its offices in Springfield, Illinois, on the first day of April, 1914, and being fully advised in the premises, doth find that there is discrimination in the charges now made by the said Home Telephone Company.

It is, therefore, ordered, adjudged and decreed, That the petitioner, the Home Telephone Company of Douglas County, Illinois, shall from and after May 1, 1914, discontinue its charge of \$1.00 per month for business or residence telephones on either private or party line; and that the petitioner shall on and after the date aforesaid charge its stockholders and non-stockholders the same rates for the same class of service.

It is further ordered, That the new schedule of rates as herein indicated shall be published as provided by law.

By order of the Commission, this fifth day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE LEXINGTON
HOME TELEPHONE COMPANY, LEXINGTON, ILLINOIS, FOR
AUTHORITY TO CHANGE RATES.

No. 2299.

Granted May 6, 1914.

**Approval of Rate upon Consolidation of Competing Exchanges—Rate
Higher than Rate of Either Competing Company but
Lower than Sum of Both Rates.**

OPINION AND ORDER.

On March 28, 1914, the Lexington Home Telephone Company, of Lexington, Illinois, filed with the Commission an application for authority to change rates. The applicant is a corporation organized and doing business under the laws of the State of Illinois, and is a public utility engaged in the operation and management of a telephone system in and around the village of Lexington, McLean County, Illinois.

Hearing was held at the offices of the Commission at Springfield, Illinois, on Tuesday, May 5, 1914. *Mr. L. F. Hyneman*, secretary and manager of the company, appeared for the applicant. No one appeared objecting. The application sets forth that in the month of December 1913, the Lexington Home Telephone Company bought the property of the Lexington Telephone Company which, up to that time, had been operating a telephone system in and around the village of Lexington in competition with Lexington Home Telephone Company.

The application further sets forth that, prior to the consolidation of the two companies, the Lexington Home Telephone Company charged \$21.00 per annum for independent line business service, and the Lexington Telephone Company charged \$18.00 per annum for the same class of service, which made a rate of \$39.00 per annum to parties who, through necessity, subscribed to the service of both companies.

It was developed by the testimony that the consolidation of the physical property of the two companies was

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completed on December 15, 1913, and since that date all subscribers have been served through the exchange of the Lexington Home Telephone Company. The rate charged since December 15, 1913, for independent line business service is \$24.00 per annum, a reduction of \$15.00 per annum from the combined rates of the two companies that were in effect prior to December 15, 1913.

It was further developed by the testimony that the merger of the two telephone systems was brought about largely through the efforts of the business men of the town of Lexington, who, through necessity, subscribed to the service of both companies, and it further developed that the service now furnished through the one exchange is much more satisfactory to all parties served and that there is no objection whatever on the part of any one of the patrons of the Lexington Home Telephone Company to the proposed change in rates.

No data was offered from which the Commission could determine the plant's cost, operating revenues, and operating expenses of the Lexington Home Telephone Company, but in the light of the facts as shown by the application and from the testimony presented at the hearing, it appears that the proposed change in the rate for independent line business service is fair and reasonable.

Accordingly, it is, this sixth day of May 1914, by the State Public Utilities Commission of Illinois,

Ordered, That, effective as of December 15, 1913, the rate for independent line business service furnished by the Lexington Home Telephone Company in the village of Lexington, Illinois, shall be \$24.00 per annum, until otherwise ordered by the Commission.

By order of the Commission, this sixth day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE ELKHART INDEPENDENT TELEPHONE COMPANY OF ELKHART, ILLINOIS,
FOR AUTHORITY TO CHANGE RATES.

No. 2291.

Decided May 7, 1914.

**Sufficient Revenue — Increase in Rates — Rate for Switching Service
When Subscriber Owns Equipment.**

Application to increase rates filed by the Elkhart Independent Telephone Company which operated a small rural system. It appeared that on account of the limited territory served, the station development was poor and the revenues had been insufficient to maintain and operate the plant adequately. Consequently ordinary repairs had been neglected and poor service had resulted.

The rate of \$12.00 proposed to be charged for switching service stations, *i. e.*, stations owned and maintained by the subscribers, was found to be unreasonable by comparison with the rates charged by other telephone companies for similar service, \$6.00 appearing to be the maximum charge made by larger telephone companies.

The Commission authorized an increase of 20 per cent. in all rates except those for switching service.*

OPINION AND ORDER.

On April 25, 1914, the Elkhart Independent Telephone Company of Elkhart, Illinois, filed with the Commission application for authority to change rates. The applicant is a corporation organized and doing business under the laws of the State of Illinois, and is a public utility engaged in the operation and management of a small rural telephone system in and around the village of Elkhart, Logan County, Illinois.

A hearing was held at the office of the Commission at Springfield, Illinois, Tuesday, May 5, 1914: *Honorable John G. Oglesby*, a citizen of Elkhart, appeared for the applicant. *Mr. W. E. Nation*, residing near the village of Elkhart and a former subscriber to the service of the petitioner, appeared objecting.

* Editor's headnote.

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The application set forth, and it was developed by the testimony, that the Elkhart Independent Telephone Company has been operating and furnishing telephone service to the people of the village of Elkhart and vicinity since the year of 1906, and that by reason of their small station development, due to the limited territory served, the revenues are insufficient to properly maintain and operate the property.

Ordinary repairs necessary to maintain the plant and serve at reasonable standards have been neglected, and as a result the service has been poor, and complaints have been frequent.

It further develops that petitioner now owes about \$1,500 and that \$1,000 is required at once for replacements and repairs.

The application further sets forth that the classifications of service furnished, present rates and proposed rates are as follows:

<i>Classification</i>	<i>Present Rate</i>	<i>Proposed Rate</i>
Business telephones	\$15 00	\$18 00
Residence telephones	15 00	18 00
Rural telephones	15 00	18 00
Service stations (switching).....	5 00	12 00
Service stations (independent switching).....	6 00	12 00

In connection with the schedule of rates it developed that the rural lines not owned by the company were built several years ago at an average cost of \$35.00 per station. For several years the charge for switching these privately owned stations was \$3.60 per year per station. Since the year 1908 the rate has been \$5.00 per year per station.

The proposed increase in rates for business and residence telephones appears to be fair and reasonable, and the proposed change in rates for rural telephone service, it developed, is not opposed by any of the parties served. However, as compared to the rates charged by telephone companies operating in similar communities and serving the same class of subscribers the proposed charge of \$12.00 per annum for switching service stations, that is, stations

including lines and all other equipment, owned and maintained by the subscribers is unreasonable. From all the comparative data available, it appears that \$6.00 per annum per station is the maximum charge fixed by the larger telephone companies for switching service stations, and it appears that any charge in excess of \$6.00 per annum for the service furnished by the petitioner would be excessive.

It is, therefore, this seventh day of May, 1914, by the State Public Utilities Commission of Illinois,

Ordered, That effective as of May 15, 1914, the rates and charges of the Elkhart Independent Telephone Company for service furnished in and around the village of Elkhart, Illinois, shall be as set forth in the following schedule until otherwise determined by the Commission:

<i>Classification</i>	<i>Present Rate</i>	<i>Proposed Rate</i>
Business telephone	\$15 00	\$18 00
Residence telephone	15 00	18 00
Rural telephones	15 00	18 00
Service stations (switching).....	5 00	6 00

By order of the Commission, this seventh day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE STREATOR TELEPHONE COMPANY, STREATOR, ILLINOIS, FOR AUTHORITY TO CHANGE RATES.

No. 2232.

Granted May 15, 1914.

Adjustment of Rates at Request of Company — Elimination of Discriminatory Rates.

OPINION AND ORDER.

The petitioner in this case, on March 6, 1914, filed with the Commission application for authority to make certain changes in its rates and charges.

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Among other matters mentioned in said petition it is set forth that, in the city of Streator, certain subscribers to petitioner's exchange have been furnished the service by petitioner at rates below the regular schedule of rates as follows:

TABLE No. I.

<i>Name of Subscriber</i>	<i>Rate charged per annum</i>	<i>Regular annual rate for the class of service (in force July 1, 1913, and prior thereto)</i>
Eagles' Club	\$18 99	\$36 00
Elks' Club	18 00	36 00
Streator Club	18 00	36 00
Streator Free Press	Complimentary	36 00
Streator Independent Times.....	Complimentary	36 00
Streator Monitor	Complimentary	36 00
St. Mary's Hospital	Free	36 00
Detention Hospital	Free	12 00
M. Purcell & Company.....	102 00	120 00
Heenan Mercantile Company, PBX Board...	No charge	36 00
Columbial Hotel, Hotel PBX Board.....	No charge	5 00

The petition also shows certain rural subscribers to petitioner's Streator exchange who have been furnished service at a lower rate than the regular rate for that class of service as follows:

TABLE No. II.

<i>Name of Subscriber</i>	<i>Rate charged per annum</i>	<i>Regular annual rate for the class of service (in force July 1, 1913, and prior thereto)</i>
William Poole	\$10 00	\$18 00
W. J. Stevenson	10 00	18 00
Chas. Baker	10 00	18 00

The petition further shows that certain subscribers to petitioner's Streator exchange, located outside the limits of the city of Streator (exclusive of rural subscribers),

have been charged more than the regular rate and that certain other of its subscribers in the same locality have been furnished service at less than the regular rate for similar classes of service furnished them, as follows:

TABLE No. III.

<i>Name of Subscriber</i>	<i>Rate charged per annum</i>	<i>Regular annual rate for the class of service (in force July 1, 1913, and prior thereto)</i>
Metal Stamping Corporation	\$48 00	\$42 00
A. C. Burley	48 00	42 00
A. J. Daugherty	36 00	48 00
Kline Brothers (two-party).....	24 00	33 00
Streator Aqueduct Company.....	48 00	54 00
C. W. & V. Coal Company (north shaft).....	42 00	45 00
George Whitecomb	36 00	42 00
Streator Paving Brick Company.....	36 00	39 00
National Drain Tile Company.....	36 00	39 00
Muntz Bros.	36 00	39 00
Barr Clay Company	48 00	51 00
Streator Clay Manufacturing Company.....	45 00	48 00

The petitioner asks for authority to increase the rates charged the subscribers mentioned in Tables No. I and No. II aforesaid, to the regular rates charged for similar service as shown in the second column of rates in said tables.

The petitioner also seeks authority to reduce the charges to the first two subscribers shown in Table No. III, as above set forth, and to increase the rates charged the remainder of the subscribers listed in said Table No. III to the regular rates in force July 1, 1913, and prior thereto for such service, as are shown in the second column of rates in said table.

A hearing was held at the office of the Commission at Springfield on April 22, 1914. *L. R. Parker*, secretary of the Streator Telephone Company, appeared for the petitioner. No one appeared in opposition.

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It appeared from the testimony offered on behalf of the petitioner that the subscribers mentioned in Tables Nos. I and II and all excepting the first two subscribers listed in Table No. III, aforesaid, have been receiving concessions in the way of reduction from the regular rates as shown in said tables.

The testimony further showed that the first two subscribers mentioned in the above Table No. III have been charged a higher rate than that provided for in petitioner's regular schedule of rates, as is shown by said table.

Now, therefore, the Commission, being fully advised in the premises, finds that the rates charged the subscribers mentioned in the above Tables Nos. I and II and all excepting the first two subscribers in Table No. III are lower than the regular rates charged petitioner's other subscribers for the same classes of service and are therefore discriminatory and should be discontinued.

The Commission further finds that the first two subscribers mentioned in the above Table No. III have been charged in excess of petitioner's regular rates to its other subscribers for the same classes of service, which also results in discrimination and should be discontinued.

It is, therefore, ordered, That the petitioner herein shall from and after May 10, 1914, increase the charges to the subscribers mentioned in the foregoing Tables Nos. I and II, and to all except the first two subscribers listed in Table No. III, to the rates and charges shown in the petitioner's regular schedule of rates that was in force July 1, 1913.

It is further ordered, That the petitioner herein shall, from and after May 10, 1914, reduce the charges to the first two subscribers mentioned in the above Table No. III to the regular rates and charges shown in the petitioner's regular schedule of rates that was in force July 1, 1913.

By order of the Commission, this fifteenth day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE WASHINGTON
HOME TELEPHONE COMPANY FOR APPROVAL AND CON-
FIRMATION OF RATES AND REGULATIONS.

No. 2322.

Decided May 15, 1914.

Combination Business and Residence Rate Eliminated.

OPINION AND ORDER.

The application of The Washington Home Telephone Company prayed for the approval and confirmation of a schedule of rates, rules and practices in force January 1, 1914.

This case came on for hearing before the Commission at Springfield, Illinois, on May 5, 1914, *Ben Boynton* and *C. B. Cheadle*, appearing for the petitioner, and *E. A. Rich* appearing for the citizens of Washington.

The petitioner prayed for the approval of a schedule of rates which merely eliminates a so-called "combination rate" of \$2.50 per month, which is the special charge for a business and a residence telephone. The Commission does not at this time approve said schedule of rates. The question at issue is whether such combination rate is a discrimination in rates or charges. If it follows that because a subscriber uses a business telephone he is, therefore, given a residence telephone at a lower rate than the regular rate, so that equivalent and similar service is being furnished at different rates to different persons, such "combination rate" is discriminatory.

The Commission, having heard the testimony in the case, and being fully advised in the premises, finds that a "combination rate" for a residence and a business telephone which is less than the sum of the published rates for each is unlawful.

It is, therefore, ordered, That on and after June 1, 1914, The Washington Home Telephone Company discontinue a "combination rate" for a business and a residence tele-

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phone which is less than the sum of the published rates for each.

It is further ordered, That this change in schedule be filed with this Commission and published as required by law.

By order of the Commission, this fifteenth day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE HENRY TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2326.

Granted May 15, 1914.

**Increase in Rates for Rural Service — Discount for Prompt Payment —
Elimination of Combination Business and Residence Rate.**

OPINION AND ORDER.

The petition filed herein shows that two changes have been made in the rates, rules and regulations of the petitioner at its exchange located at Henry, Illinois, since July 1, 1913, and asks the Commission to approve said changes.

The first change is with respect to the rate for party rural lines which on July 1, 1913, was \$1.00 per month; on January 1, 1914, that rate was increased to \$1.25 per month with a discount allowed of 25 cents per month if paid quarterly on or before the twentieth day of the second month in which the service was rendered.

The second change was the abolishment of a "combination rate" allowed to subscribers having a business telephone and a residence telephone on separate lines, which rate was lower than the sum of the business and residence rates.

On April 22, 1914, the case came on for hearing at the offices of the Commission at Springfield, Illinois. *C, B.*

Cheadle, secretary of petitioner, and *Ben B. Boynton*, attorney for petitioner, appeared in support of the petition. No one appeared in opposition.

The Commission, having heard the testimony and being fully advised in the premises, finds that under the facts and circumstances (and taking into consideration the rules and regulations of petitioner with respect to discounts) appearing in this case, the charge of \$1.25 per month to subscribers on rural lines is reasonable.

That the allowance of the discount of 25 cents per month from the above rate if paid quarterly on or before the twentieth day of the second month in which service is rendered is a reasonable regulation.

The Commission further is of the opinion that the "combination rate" whereby telephone subscribers are allowed both business and residence telephones for less than the sum of the rate for the two classes of service is a discrimination against the subscribers who maintain but one telephone and the practice should be discontinued.

It is, therefore, ordered, That the rate of \$1.25 per month per telephone to subscribers on rural lines be, and the same is hereby, approved.

It is further ordered, That the "combination rate" above mentioned be discontinued, and that the petitioner shall charge its subscribers for each telephone installed the regular rate for the class of service furnished.

The above change of rates and charges shall be published as provided by law, and shall become effective on May 20, 1914.

By order of the Commission, this fifteenth day of May, 1914.

Dated at Springfield, Illinois.

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IN THE MATTER OF THE APPLICATION OF THE CANTON HOME
TELEPHONE COMPANY, FOR INCREASE OF RATES, ETC.

No. 2356.

*Granted May 15, 1914.***Insufficient Revenue — Increase in Rate for Direct Line Business Telephones
— Introduction of Rates for Two-Party Lines and Extension Telephones.**

OPINION AND ORDER.

The petition filed in this case represents that the Canton Home Telephone Company is operating a telephone plant in the city of Canton, Illinois, and vicinity, and that it has about 1,800 subscribers; that it is furnishing adequate and sufficient service and that the present rates charged by petitioner are not sufficient to pay the operating and maintenance charges and to provide a sufficient depreciation fund to enable it to keep its plant in good condition.

The petitioner asks for authority from this Commission to increase its rate of charge for independent straight-line business telephones from \$2.00 to \$2.50 per month.

Petitioner also asks for authority to establish certain new rates as follows:

Two-party business telephones	\$2 00 per month.
Two-party residence telephones.....	1 25 per month.
Extensions for either business or residence telephones.	50 per month.

A hearing was held at the office of the Commission, May 5, 1914. *B. M. Chipperfield*, attorney, appeared for the petitioner and *A. E. Taff*, attorney, appeared on behalf of the city of Canton, Illinois.

From the testimony introduced on behalf of the petitioner, it appeared that the petitioner's present rates are not sufficient to pay its operating and maintenance charges, including interest fund for depreciation.

It further appears from the evidence that for the first four months of the year 1914 petitioner's receipts and expenses were as follows:

Telephone rentals for January, February, March and April,

1914	\$7,440.85
Toll receipts for same period.....	355.55
Other receipts	408.75

TOTAL	\$8,185.15*
Expenses for the above period.....	8,540.35

It therefore appears that the petitioner has operated for the first four months of the year 1914 at a loss of..... \$355.20

The testimony on behalf of the petitioner further showed that if the proposed increase in rates is authorized, it will mean an increase in revenue to petitioner of about \$1,080 per annum.

It was further shown by the testimony that the service furnished by petitioner is generally satisfactory to its subscribers. It also appears that there is no serious objection to the proposed increase in rates; and while the city of Canton was represented at the hearing and took part therein, it placed no witnesses on the stand and introduced no testimony in opposition to the proposed increase.

The Commission, having heard the testimony and being fully advised in the premises, finds that under the facts and circumstances in this case the proposed increase in rates is reasonable and just.

It is, therefore, ordered, That the petitioner be, and it hereby is authorized to increase its rate for independent straight line business telephones from \$2.00 to \$2.50 per month.

Petitioner is further hereby authorized to establish new rates as follows:

Two-party line business telephones.....	\$2 00 per month
Two-party line residence telephones.....	1 25 per month
Extensions for either business or residence telephones.	50 per month

It is further ordered, That the above mentioned rates shall become effective from and after the twentieth day of

* An error of \$20.00 appears in the opinion as reported.—Ed.

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May, 1914, and that the petitioner shall publish said rates as provided by law.

By order of the Commission, this fifteenth day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE CENTRAL UNION
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES
AT VANDALIA.

No. 2361.

Granted May 22, 1914.

**Increase in Rates Necessitated by Improvements Required by City
Ordinance.**

OPINION AND ORDER.

The application of the petitioner shows that the Central Union Telephone Company operates a telephone system at Vandalia, Illinois; that on or about October 15, 1913, said petitioner advanced certain of its rates as follows:

Individual business telephone from \$24.00 to \$30.00 per annum.

Two-party business telephone from \$18.00 to \$24.00 per annum.

Two-party residence telephone from \$12.00 to \$15.00 per annum.

The petition further states that this advance in rates was made necessary because of the expenditure of approximately \$12,000 in changes and improvements imposed by ordinance of the city of Vandalia, ordering the removal of petitioner's poles and wires from the principal thoroughfares in the city of Vandalia; that it was understood by the city council at the time said ordinance was passed that it would be necessary for petitioner to raise said rates if the required changes were made.

This case came on for hearing before the Commission at Springfield, Illinois, on May 19, 1914. It appearing that said rates are now in full force and effect and that there appears no opposition to their approval, the Commission being fully advised in the premises, finds that said rates should be assented to, by the Commission.

It is, therefore, ordered, That the Central Union Telephone Company be, and hereby is, allowed to charge the following rates for the service at Vandalia, Illinois:

Individual business telephones.....	\$30 00 per annum.
Two-party business telephones.....	24 00 per annum.
Two-party residence telephones	15 00 per annum.

It is further ordered, That the revised schedule of rates be filed with this Commission and published according to law.

By order of the Commission, this twenty-second day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE CENTRAL UNION
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES
AT SENECA.

No. 2362.

Granted May 22, 1914.

**Increase in Rates for Rural Service upon Substitution of Ten-Party Lines
for Twenty-Party Lines.**

OPINION AND ORDER.

The application of the petitioner shows that the Central Union Telephone Company operates a telephone system at Seneca, Illinois; that on or about August 1, 1913, said petitioner advanced certain of its rates as follows:

Rural business telephones from \$18.00 to \$24.00 per annum.
Rural residence telephones from \$12.00 to \$18.00 per annum.

The petition further states that this advance in rates was made necessary because of the expense of improving the service in the elimination of the twenty-party lines and the substitution of ten-party lines for rural subscribers.

This case came on for hearing before the Commission at Springfield, Illinois, on May 19, 1914. It appearing

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that said rates are now in full force and effect and are generally acceptable to the subscribers, the Commission, being fully advised in the premises, finds that said rates should be assented to by the Commission.

It is, therefore, ordered, That the Central Union Telephone Company be, and hereby is, allowed to charge the following rates for telephone service through its exchange at Seneca, Illinois:

Rural business telephones	\$24 00 per annum.
Rural residence telephones	18 00 per annum.

It is further ordered, That the revised schedule of rates be filed with this Commission and be published according to law.

By order of the Commission, this twenty-second day of May, 1914.

Dated at Springfield, Illinois.

PEOPLE'S TELEPHONE COMPANY v. COMMERCIAL TELEPHONE
AND TELEGRAPH COMPANY.

In re APPLICATION FOR A CERTIFICATE OF PUBLIC CON-
VENIENCE AND NECESSITY TO INSTALL A SWITCHBOARD IN
THE VILLAGE OF CLAY CITY.

No. 2137.

Decided May 29, 1914.

**Certificate of Public Convenience and Necessity — Installation of New
Switchboard.**

Petition for a certificate of public convenience and necessity authorizing the installation of a switchboard at Clay City. The petitioner had owned and operated a telephone system at Clay City for several years, but during the past eighteen months had rented and used the switchboard of its competitor, although its ownership of wires, poles and cross-arms continued. The petitioner desired to construct and operate its own switchboard.

Held: That the installation of a new switchboard is only an extension of, or an addition to, the petitioner's plant and not "the construction of any new plant" such as requires authorization by a certificate of public convenience and necessity.

What Constitutes a Public Utility — Jurisdiction of Commission.

Upon the question of the jurisdiction of the Commission over the petitioner.

Held: That if a telephone company is either maintained or operated for public use, it is a public utility and subject to the jurisdiction of the Commission, whether a partnership, an individual, a joint stock concern or an association meeting its expenses by assessing its members.

It appearing that the petitioner served the public as well as its subscribers throughout an extensive system, it was adjudged to be a public utility within the meaning of the statute.*

OPINION AND ORDERS.

Heard by the Commission on February 17 and 19, 1914.

The petitioner, the People's Telephone Company, on September 14, 1903, was granted permission by the Board of Trustees of the village of Clay City to enter said village subject to the ordinance of said village governing telephones. Pursuant to this action by the village board, the petitioning company, the People's Telephone Company, entered the village and established a telephone system, and it has since that time operated and maintained a telephone system so far as wires, poles and cross-arms are concerned. For eight years, until about November 7, 1911, it operated and maintained a switchboard, which was its own property, in said village.

The Commercial Telephone and Telegraph Company objects to the granting of the certificate of public convenience and necessity to the petitioner, on the ground that the People's company abandoned its own switchboard and, during eighteen months last past, has used a switchboard which it rented from a competitor.

The village, by an ordinance passed March 2, 1914, has granted the petitioner a franchise to operate therein on

* Editor's headnote.

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condition that the petitioner first obtain a certificate of public convenience and necessity from this Commission.

This Commission has the right to refuse to allow an additional telephone company or other public utility to enter with its system any community wherein a public utility of the same character is already serving that community with adequate service at reasonable rates. In the case of the application by *Bethany Mutual Telephone Company*, No. 2147,* this Commission held:

"That the policy of this Commission will be to deny all applications to telephone companies where the application is for the establishing of an additional telephone system in a city or village where a telephone system is already in operation and is furnishing adequate service at reasonable rates."

This ruling of the Commission, the objector, the Commercial Telephone and Telegraph Company, now seeks to invoke against the People's company, the petitioner. But this case differs from the *Bethany* case. In that case the petitioner was not already maintaining a telephone system in whole or in part in the village of Bethany, while in this case the petitioner, the People's Telephone Company, in fact has been operating its own telephone system in the village of Clay City from 1903, owning and operating all of its plant, except that for eighteen months in 1912 and 1913 it rented and used the switchboard of its competitor. It now asks this Commission to permit it to erect, conduct and operate a switchboard of its own so as to make efficient its service over its wires and through its instruments in that village.

The section of the statute concerning certificates of public convenience and necessity is in part as follows:

SECTION 55: Certificate of Convenience and Necessity.

"No public utility shall begin the construction of any *new* plant, equipment, property or facility, which is not in substitution of any existing plant, equipment, property or facilities or in *extension* thereof or in *addition* thereto unless and until it shall have obtained from the Commis-

* The order in this case, dated March 3, 1914, is printed in Commission Leaflet No. 29, at page 784.—ED.

sion a certificate that public convenience and necessity require such construction."

The "new plant, equipment, property or facility" which the utility must first get a certificate to construct, is only that "new plant," etc., "which is not in substitution of any existing plant, equipment, property or facilities, or in extension thereof, or in addition thereto."

If it is in "substitution" of "any existing plant, equipment, property or facilities," "in extension thereof" or "in addition thereto" then it does not need a certificate.

We are of the opinion that the putting in of a new switchboard and the extension of the facility and equipment of the petitioner already within the village of Clay City, is not "in substitution" of any existing plant or equipment of this People's Telephone Company but is "in extension thereof or in addition thereto."

The second question was raised in this case, in the argument of counsel and in the briefs, but not by the petition or answer. Therefore technically this Commission would be justified in ignoring it. However, we do not desire to be technical. This second question is whether or not the petitioner, the People's Telephone Company, is exempt from supervision by this Commission on the ground that it is not a public utility but simply a co-operative business not for public use. In the arguments and briefs the expression is frequently used that the petitioner is a mutual company. This is not a test for determining whether the petitioner is, or is not, a utility subject to the Illinois public utilities board. A mutual company may be a public utility. Many companies, exempt from the statute may possibly not be mutual associations in the sense of meeting expenses by assessment, and certainly many companies which may be called "mutual" are not exempt from the statute but on the contrary are clearly within it. The test is, the *public use*. If a telephone company is either maintained or operated for public use, then it is a public utility whether a partnership, an individual, a joint stock concern or an association meeting its expenses by

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assessing its members from time to time. This petitioning company's system undoubtedly is for public use. It serves the public in addition to its subscribers, and serves the public constantly for hire at and in some fourteen different towns and cities, both by means of systems running into those communities and by means of trunk and toll lines running between those towns and cities, that is, from one town to another. The petitioner is a public utility and is subject to the jurisdiction of this Commission and will be so regarded and treated.

Therefore the Commission finds:

1. That the installation of the switchboard in question is only an extension of, or an addition to, the plant or equipment of the petitioner and therefore not "the construction of any new plant," such as requires a certificate from this Commission.

2. That the petitioner is a public utility within the meaning of the statute and within the jurisdiction of the Commission.

And the Commission being fully advised in the premises,

It is hereby ordered, FIRST: That the prayer of the petition for a certificate of public convenience and necessity be denied.

SECOND: That the petitioner be adjudged nevertheless to be a public utility within the meaning of the statute.

By order of the Commission, this twenty-ninth day of May, 1914.

Dated at Springfield, Illinois.

THE COMMERCIAL TELEPHONE AND TELEGRAPH COMPANY v.
THE PEOPLE'S TELEPHONE COMPANY OF SOUTHERN ILLINOIS.

IN THE MATTER OF THE COMPLAINT THAT THE PEOPLE'S TELEPHONE COMPANY IS OPERATING WITHOUT AUTHORITY OF LAW.

No. 2139.

Dismissed May 29, 1914.

Elimination of One of Two Competing Companies Operating in the Same Community — Jurisdiction of Commission — Service and Rates of Competing Companies.

Complaint that respondent had forfeited all rights and was operating without authority of law. Evidence found insufficient to sustain complaint.

Held: That although it is undoubtedly an economic waste for two telephone companies to serve the same community, it does not follow that this Commission can determine which of two utilities legally operating in a community is the more fit, and thereupon proceed to eliminate the other from the community;

That competing companies must furnish adequate service at reasonable rates.

Complaint dismissed.*

OPINION AND ORDER.

A hearing in the above entitled case was held at the offices of this Commission on the seventeenth day of February, 1914, *John Lynch*, attorney-at-law, appearing for the complainant, and *Monroe and Monroe*, attorneys-at-law, appearing for the respondent.

The matters complained of in the petition or contended by the Commercial Telephone and Telegraph Company were in effect:

That the People's Telephone Company had received a franchise to operate a telephone company in the city of Flora by an ordinance passed by the city council on the sixth day of March 1911, and that it closed its exchange on the fifth day of November 1913, and discontinued all business until December 30, 1913, and that thereby it forfeited the said franchise, and therefore and from that time on it had no authority to transact business under that ordinance.

* Editor's headnote.

The People's Telephone Company, the respondent company, answering, denied that the respondent closed its telephone exchange and discontinued its business from November 5, 1913, until December 30, 1913, and pointed out that, under the terms of the ordinance of March 6, 1911, there could be no abandonment of its franchise in the city of Flora unless there was insufficient service for a period of at least sixty days.

Upon the hearing it was contended by the complainant, through its counsel, that the respondent had forfeited all its rights under its original ordinance, not only by the alleged abandonment above mentioned and by insufficient service, but also by the acceptance of a new ordinance passed on the twelfth day of January 1914, granting to respondent the right to operate a telephone system in the city of Flora.

The main contention in the case, and the main point to which practically all the testimony was directed, was to the effect that it was the duty of this Commission to prevent duplication of public utilities of the same character in the same community, and that the operation of two telephone systems in the city of Flora tended to prevent the community from receiving adequate service, and that therefore it is the duty of this Commission to exclude by any means within its power either one of said utilities which could be legally so excluded. On this question of which of the two companies was rendering the better service there was a mass of testimony extending over three days, but the Commission does not feel called upon to decide that question in view of the conclusion that it has reached in the case.

It is the opinion of the Commission the testimony does not sustain the allegation of the complainant that the People's Telephone Company has abandoned its original right to do business in the city of Flora, either by sixty days of insufficient service or by acceptance of a new ordinance.

The statute establishing this Commission does not authorize the Commission to issue a writ of mandamus or an injunction. It is undoubtedly an economic waste for two telephone companies to serve the same community, especi-

ally if that community be one of the smaller communities in the commonwealth, and economists and courts now recognize that there is such a thing as a natural monopoly. The theory is that such natural monopoly, if properly regulated, is better for a community than the highly competitive relations and conditions which result from the operation of several public utilities of the same character in the same community, but it does not follow that this Commission can determine which is the more fit of two utilities which are already legally operating in the same community and then proceed to eliminate the other from such community.

The refusal by this Commission to grant the application of the complainant in this case for some kind of relief against the respondent, does not mean that a community shall be left to insufficient service or inefficient service. The two companies in this case must furnish adequate service and at reasonable rates.

Therefore the Commission, being fully advised in the premises, denies the prayer for relief in the petitioner's complaint, and orders that the complaint herein be, and the same is, hereby dismissed.

By order of the Commission, this twenty-ninth day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE FAYETTE HOME
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES
IN THE CITY OF SAINT ELMO AND VILLAGES OF LACLEDE
AND LOOGOOTEE, ILLINOIS.

No. 2185.

Dismissed May 29, 1914.

Refusal to Authorize Increase in Rates — Inadequate Service — Improvement of Service Required.

OPINION AND ORDER.

The petitioner in this case, The Fayette Home Telephone Company, filed its application with this Commission for

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authority to change rates in the city of Saint Elmo and in the villages of Laclede and Loogootee, as follows:

From \$.75 to \$1.00 per month for rural residence telephones.

From \$.75 to \$1.50 per month for rural business telephones.

From \$1.00 to \$3.00 per month for switching rural lines.

A hearing was had on this case before the Commission on March 17, 1914. *G. T. Turner*, attorney, appeared for the petitioner. On the hearing in this case it was stipulated and agreed that the testimony taken in Case No. 2181, *The Fayette Home Telephone Company v. W. P. Kepner et al.*,* should be considered a part of the testimony in this case.

The testimony shows that the service furnished by the petitioner at the time of the hearing and prior thereto, was neither adequate nor satisfactory; that petitioner's equipment was not properly maintained and that on some of its lines, the wires of the petitioner had been permitted to remain unfastened on the cross-arms with broken ends of wires hanging from the poles for a considerable period of time; that many of its poles were lying down in the roadway at the time of the hearing and had been in that condition for some time. It also appeared that complaints concerning these matters had been brought to the attention of the manager of the petitioner and that practically no improvement has been made in the condition of the poles and wires and appliances of the company.

It is within the power of this Commission to require public utilities to furnish adequate and efficient service and the Commission is of the opinion that the service rendered by the petitioner, as indicated by the testimony in this case, is not satisfactory nor adequate. The Commission is further of the opinion that it would not be justified in authorizing any increase in the rates of the petitioner at this time, in view of its failure to furnish proper service.

It is, therefore, ordered, That petitioner shall improve its service, and to that end it shall repair or replace its defective equipment and make such other improvements as

may be necessary in order to furnish adequate and efficient service.

It is further ordered, That the prayer of the petitioner be denied, and that the petition filed herein be, and the same hereby is, dismissed without prejudice, however, to the right of the petitioner to make a new application for increase of rates at such time as it may have improved its service so as to meet the requirements of this Commission.

By order of the Commission, this twenty-ninth day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE PEOPLE'S HOME
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2325.

Granted May 29, 1914.

Increase in Rate for Rural Grounded Party Lines — Discount for Prompt Payment.

OPINION AND ORDER.

The petition filed herein shows that one change in its rates has been made by petitioner at its exchange in Chilli-cothe, Illinois, since July 1, 1913.

This change is in respect to the rate for rural grounded party line telephones which on July 1, 1913, was \$1.00 per month. On January 1, 1914, the rate was increased to \$1.25 per month with a discount allowed of 25 cents per month if paid on or before the twentieth day of the month in which the service is rendered, or if paid quarterly on or before the twentieth day of the second month of the quarter in which the service is rendered.

On April 22, 1914, the cause came on for hearing at the offices of the Commission at Springfield, Illinois. C. B. Cheadle, secretary of petitioner, and Ben B. Boynton, attorney for petitioner, appeared in support of petition. No one appeared in opposition.

The Commission, having heard the testimony and being

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fully advised in the premises, finds that under the facts and circumstances appearing in this case (and taking into consideration the rules and regulations with respect to discounts) a charge of \$1.25 per month for rural party line telephones is reasonable.

The Commission is further of the opinion that the allowance of a discount of 25 cents per month from the above rate, if paid on or before the twentieth day of the month in which the service is rendered, or if paid quarterly on or before the twentieth day of the second month of the quarter in which the service is rendered, is a reasonable regulation.

It is, therefore, ordered, That the rate of \$1.25 per month per telephone to subscribers on rural grounded party lines be, and the same hereby is, approved.

It is further ordered, That the above change in rate shall be published as provided by law and shall become effective on the twenty-ninth day of May, 1914.

By order of the Commission, this twenty-ninth day of May, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE CHICAGO TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2335.

Granted May 29, 1914.

Toll Service — Extension of Additional Period from One Minute to Two Minutes.

OPINION AND ORDER.

This is an application by the Chicago Telephone Company which operates a telephone system in the counties of Cook, Lake, McHenry, Kane, Kendall, Will and Grundy, for authority to change its toll rates.

At the present time, on calls where the toll rate for the initial period of three minutes is 10 cents, the additional

charge for each excess minute, or fraction thereof, is 5 cents.

The petitioner desires to change the rate so that on toll calls as above mentioned, where the rate for the initial period of three minutes is 10 cents, the additional charge for each two minutes, or fraction thereof, shall be 5 cents.

This case came on for hearing before the Commission at Chicago on May 12, 1914. *Mr. A. P. Allen* appeared on behalf of the petitioner.

The Commission, having heard the testimony and being fully advised in the premises, finds that the application in this case is merely for a reduction in the rate for toll service in excess of the three minute initial period.

It is, therefore, ordered, That the prayer of the petition be granted, and that on all toll calls, where the rate for the initial period of three minutes is 10 cents, the additional charge for each two excess minutes, or fraction thereof, shall be 5 cents.

The above change in rate shall be published as provided by law, and shall become effective on June 1, 1914.

By order of the Commission, this twenty-ninth day of May, 1914.

Dated at Springfield, Illinois.

C. T. WELLS *et al.*, EXECUTIVE COMMITTEE OF SUBSCRIBERS
OF ELWIN EXCHANGE, *v.* MACON COUNTY TELEPHONE
COMPANY.

In re COMPLAINT AS TO TELEPHONE PLANTS AND ALLEGED
INADEQUATE TELEPHONE SERVICE AT ELWIN, ILLINOIS.

No. 2166.

*Decided June 5, 1914.**

Discontinuance of Discount for Payment in Advance Not an Increase in Rates.

Complaint that enforcement of regular rate and abandonment of reduced rate for payment in advance was in effect an increase in rates,

* On July 10, 1914, the Commission denied the application of the petitioner for a rehearing.—ED.

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and that the service rendered by the respondent was inadequate and unsatisfactory.

Held: That a reduction of \$6.00 from a rate of \$18.00 per annum upon the payment of a year's rental in advance, is in substance and effect the allowance of a discount, and that the discontinuance of such a discount and the collection of the regular rate is not an increase in rates.

Inadequate Service — Improvements Required.

The evidence showed that the service furnished had been inadequate and unsatisfactory in many respects.

Held: That inasmuch as a reasonable effort is being made to improve the service and considerable improvements had been completed prior to the hearing, the respondent should be given a fair opportunity to improve its service.

Ordered, That respondent bring its service and equipment to a reasonable degree of efficiency within thirty days and at that time report to the Commission what has been done.*

OPINION AND ORDER.

The petition in this case averred that the complainants are members of an executive committee appointed by subscribers to the telephone exchange at Elwin, Illinois, of the Macon County Telephone Company, residing in Macon, Illinois; that the Macon County Telephone Company, respondent, is charging its subscribers other and different rates and charges than those in effect July 1, 1913; that it is discriminating in its rates and charges between subscribers of the same class; that said respondent has not filed with this Commission copies of all contracts and agreements with other public utilities affecting the cost of service; and that the service furnished by the respondent is neither adequate nor satisfactory.

The respondent answered denying substantially all of the charges in the complaint, except that it admitted that it had not as yet filed a copy of the schedule of joint rates in force between its company and the Decatur Home Telephone Company. It stated, however, that a schedule of these joint rates was being prepared and would be filed at an early date.

* Editor's headnote.

A hearing was held at the office of the Commission at Springfield, Illinois, March 3, 1914. *James S. Baldwin*, attorney, appeared for complainants and *Ben B. Boynton*, attorney, appeared for the defendant.

The testimony showed that the Elwin telephone exchange, located in the village of Elwin, Illinois, is owned and operated by the respondent company and that said company owns eight other telephone exchanges located in other cities and villages in that locality; that there are 170 subscribers to the Elwin exchange, although the village itself contains but fifteen dwellings; that the respondent company has a rate of \$18.00 per annum, or \$1.50 per month, which rate appears to have been in force July 1, 1913; that for this payment the subscribers to the Elwin exchange receive service over the lines of the respondent that connect with the 170 stations at Elwin and vicinity, as above mentioned, and that they also have free service to Decatur and with the 3,000 stations that are connected with respondent's exchange in that city.

The evidence further shows that on or about April 1, 1913, approximately 130 subscribers paid in advance for a year's service and in consideration of such payments in advance, the respondent company deducted \$6.00 from its regular rate of \$18.00 per year, making the net amount paid \$12.00.

The evidence also showed that since January 1, 1914, the subscribers to the Elwin exchange have been notified by the respondent that on and after April 1, 1914, the regular rate of \$18.00 per year would be adhered to and the reduced rate of \$12.00 per year would be abandoned.

The contention of the complainants is that the enforcement of the above notice by the respondent would in effect be an increase of rates. This contention is based on the proposition that if on July 1, 1913, 130 subscribers had a rate of \$12.00 per year by payment in advance, and only a few had a rate of \$18.00, then the regular rate would be \$12.00 per annum. We cannot sustain this contention for the reason that the evidence shows that the regular schedule

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rate of the respondent company was \$18.00 per year, and that it was only by a payment of a full year in advance that a reduction of \$6.00 was made.

Our conclusion is that the reduction of \$6.00 from the rate of \$18.00 allowed for payment in advance on April 1, 1913, was in substance and effect the allowance of a discount, and that the discontinuance of the practice of allowing such discount and the collection of the regular rate of \$18.00 per year, beginning April 1, 1914, is not an increase of rates.

The other question involved in this case is as to whether the respondent company has been giving the subscribers of the Elwin exchange adequate service. The evidence shows that the service furnished during the latter part of the year 1913 was neither adequate nor satisfactory; that the subscribers had difficulty in getting connection with central; that the equipment of the respondent has not been properly managed; that the wires of the company had been permitted to remain unfastened on the cross-arms for a considerable period and that some complaints of these matters have been made to the management of the respondent company and apparently no attention paid to the same.

It appears, however, that in several instances complaints were not made direct to the manager but only the telephone operator at the exchange was advised, and as to whether such complaints ever reached the management of the company was not shown. In one instance a subscriber lived several miles from the village and sought to use the telephone in a case of sickness at one o'clock in the morning and found no one at the central office to give service.

This Commission has authority and is disposed, in a case where a telephone company fails and refuses to render proper service, to require it to do so.

It appears, however, from the testimony, and in fact is conceded by the complainants, that considerable improvement in many respects has been made in the equipment and service during the early part of the year 1914. Testimony offered on behalf of the respondent indicates that it realizes

the service rendered by it has not been adequate nor satisfactory, and it appears from what has been done during the early months of 1914, that an effort in good faith is being made to remedy most of the conditions complained of. In fact, most of the causes of complaint shown upon the hearing were based upon conditions that existed during the latter months of 1913.

Our conclusion is that since it appears that the respondent company is making a reasonable effort to improve the service, and that some improvements were being made prior to and at the time of the hearing, the respondent should be given a fair opportunity to improve its service.

It is, therefore, ordered, That the respondent shall within thirty days from the date of this order, *viz.*, by July 5, 1914, bring its equipment and service up to a reasonable degree of efficiency, and at that time report to this Commission what has been done in pursuance of this order.

By order of the Commission, this fifth day of June, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE FAIRBURY TELEPHONE COMPANY OF FAIRBURY, ILLINOIS, FOR AUTHORITY TO CHANGE RATES.

No. 2196.

Decided June 5, 1914.

Insufficient Revenue—Increase in Rates for Residence Service.

Application to increase rates for residence service and install party line business and residence service, alleging that the existing rates are insufficient to provide for operating expenses, depreciation and return on capital invested.

Conflict with Rates Fixed by Ordinance—Jurisdiction of Commission.

The city of Fairbury moved that the application be dismissed because it was in conflict with the terms of an ordinance fixing the maximum rates to be charged by the applicant.

The Commission denied this motion.

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Held: That the statute creating the Commission authorizes it to fix reasonable rates and that no limitation upon this power is found in the statute;

That the statute was passed in the exercise of the police power of the State and all ordinances or contracts affecting rates must be held to have been made subject to the exercise of this power by the State.

Factors to be Considered in Determination of Reasonable Rate.

Held: That the question to be determined in this case is whether or not the proposed increase in rates is justifiable, for the proper decision of which question it is necessary to consider the character of the service rendered, the equipment, the earnings and operating expenses, and what improvements, if any, should be required in order to insure adequate service.

Installation of Party Line Service — Limitation to Two-party Line Service.

Held: That the installation of party line service will cut down the fixed charges per station and tend to more economical service and is unobjectionable provided that not more than two parties are placed on one line and further that patrons are allowed to choose the class of service they desire.

Saving Effected by Installation of Party Line Service — Reserve for Future Development.

Held: That any saving resulting from the installation of party line service will scarcely be greater than the reserve which good business management would demand in view of the future development of business.

Insufficient Revenue — Inability to Secure Funds for Improvements — Improvement of Service and Methods of Management.

Held: That the applicant is not earning sufficient revenue to provide for operating expenses, depreciation and fair return for interest and profits, and that if service is continued at the present low cost, it must be continued at the expense of proper maintenance and it is doubtful whether adequate service can continue to be furnished;

That the applicant is unable to secure funds for extensions and necessary improvements because of the unattractiveness of the investment;

That it would not be fair to require consumers to pay an increased rate until the applicant shall have improved the condition of its plant and placed the property under competent management;

That only temporary relief should be granted until the applicant has made the necessary improvements and such changes in its methods of management, accounting and general business practice as will meet the requirements of the Commission.

The proposed increase in rates was authorized and the applicant was required to make the necessary improvements and such changes in methods as required by the Commission.*

OPINION AND ORDER.

The application in the above entitled matter represents that the Fairbury Telephone Company is a corporation organized under laws of the State of Illinois, with its principal place of business at Fairbury, Livingston County, Illinois, and that on January 1, 1914, it had in effect the following schedule of rates:

<i>Classification</i>	<i>Rates</i>
Single line business telephones.....	\$2 00 per month
Party line business telephones.....	1 50 per month
Single line residence telephones.....	1 00 per month
Party line residence telephones.....	75 per month
Business and party line telephones.....	2 50 per month
Extension telephones	50 per month

The application further represents that:

"The present rental rates for single line and party line residence telephones are insufficient to enable the said applicant to pay its necessary operating expenses, allow a proper depreciation fund and pay a reasonable return on the capital invested,"

and application is made to place in effect a schedule of rates as follows:

<i>Classification</i>	<i>Rates</i>
Single line business telephones.....	\$2 00 per month
Party line business telephones.....	1 50 per month
Single line residence telephones.....	1 25 per month
Party line residence telephones.....	1 00 per month
Business and party lines.....	2 50 per month
Extension telephones	50 per month

Hearing was held at the office of Commission at Springfield, Illinois, on April 1, 1914. *Ben B. Boynton* and *E. A. Agard*, attorneys, appeared for the petitioner. *John H.*

* Editor's headnote.

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McFadden, city attorney of Fairbury, Illinois, appeared for the city council of the city of Fairbury.

Counsel representing the city of Fairbury moved that the application be dismissed because of the terms of a certain ordinance granted to the Fairbury Telephone Company by the city of Fairbury on January 18, 1905, which fixes the maximum rate of \$2.00 per month for single line business telephones and \$1.00 per month for single line residence telephones.

No provision is made in the said franchise for party line service.

The motion of the city of Fairbury to dismiss the application herein is denied, for the reason that the "*Act to provide for the regulation of public utilities*" of this State expressly authorizes this Commission to determine and fix the just, reasonable and sufficient rates or other charges, classification, rules, regulations, contracts or practices of any public utility doing business within this State. No limitation upon such power of this Commission is to be found in the act.

The statute providing for the regulation of public utilities within this State was passed in the exercise of the police power of the State, and all ordinances or contracts affecting rates or charges by public utilities for commodities or service to be rendered or performed by them must be held to have been made in view of and subject to the right of the State to exercise this police power in such a way as to disregard such contracts or ordinances, if the interest and welfare of the public should so demand.

It follows therefore that the question to be determined in this case is not whether there was an ordinance fixing maximum rates for telephone service but whether or not the proposed increase in rates and charges by the petitioner is justified. For the proper decision of the latter question it is necessary to consider the character of the service which is being given in the city of Fairbury by the petitioner; equipment of petitioner; earning and operating expenses of the petitioner; what improvements in equipment if any

should be required in order to give adequate service; and such other facts and circumstances as will enable the Commission intelligently to pass upon the question before it.

On February 28, 1914, two months after the organization of this Commission, the Fairbury Telephone Company filed an application for authority to change rates and appealed to this Commission for relief.

The statement of the station development of the petitioner was filed at the hearing which developed that some party line service is being furnished. According to the testimony such service has been furnished only at the request of the patrons, and insomuch as a rate was fixed for such party line service this classification and rate were included in the schedule of rates now in force and effect as shown by the application.

Six hundred and twenty-four telephones were in operation on March 1, 1914, as shown by the following statement:

TERRITORY AND STATION DEVELOPMENT.

Place	Estimated population	Number of stations Date March 1, 1914								
		Ind. Bus.	2-P. Bus.	Ind. Res.	2-P. Res.	4-P. Res.	Bus. & Res.	Extra	Total	Gain during past year
Fairbury	2,800									
Main line.....	.....	65	7	329	154	....	42	12	624	38
Extensions.....	.....	7	....	8	....	....	....	....	....	....

The petitioner filed at the hearing a sworn statement of the revenues and expenses as of March 1, 1914, which is designed to represent from a financial standpoint the actual operating conditions prevailing at the present time. This statement has since been made up on a standard form provided by the Commission and is known as "Table 1."

TABLE NO. 1.

EARNINGS AND EXPENSES.

12 Months Ending March 1, 1914.

<i>Gross revenue:</i>	<i>Total</i>	<i>Per station</i>
Exchange	\$8,196 12	\$13 08
Toll	2,233 80	3 50
TOTAL	\$10,429 92	\$16 58
<i>Expenses:</i>		
Operating .....	.....	.....
Repairs .....	.....	.....
Depreciation .....	.....	.....
Taxes .....	.....	.....
TOTAL	\$9,713 30	\$15 45
Net revenue	\$716 62	\$1 15
Sundry net earnings.....	332 75	53
TOTAL NET EARNINGS.....	\$1,049 37	\$1 68
Deduct interest	296 40	47
		\$1 21

With regard to the statement of earnings nothing need be said at this time. The Commission has attempted to verify the items of expense and profits and to test their reasonableness. Actual verification however, seems impossible, for until very recently the company kept no detailed account of its expenditures. However, the statement of expense seems to be a fairly accurate representation of the current expenses of the company and the only item which appears to require special consideration is the salary of \$1,800 per annum paid to Mr. Ray Blaisdell, the president of the company.

In order that the Commission might have a more complete understanding of the entire situation and some knowledge of the condition of the petitioner's physical property, an investigation and an examination of the property was

made by the special examiner for the Commission. The physical condition of the plant is very poor. A large part of the original plant is still in use and by reason of poor maintenance is in a badly depreciated condition. About 624 stations are connected and of this number about 350 are on the south side of town and about 275 on the north side of town. About 17,000 feet of new cable was placed in service a little more than a year ago. Part of this was placed underground but all the underground construction is not standard and considerable trouble has been experienced in maintaining this cable free from trouble. The new aerial cable was placed on existing pole leads that were insufficiently guyed and as a result the messenger and cable are in many places very slack and there are breaks in the cable sheathing that will eventually cause trouble.

The application asks for authority to install party line business service and party line residence service. The installation of party line service for a large class of patrons is undoubtedly a move in the direction of more economic telephone service and there seems to be no reason why such service should not be offered provided that not more than two parties are placed on any one line, and provided further that patrons are allowed to choose what class of service they shall have. The effect of the introduction of such service with the attendant increase which may be expected in the number of subscribers will cut down the interest and depreciation and some of the other expenses per station, as the amount of plant and equipment required per station will be decreased, but as the business is likely to be still further developed, such excess as exists beyond the present needs, with the payment arranged for party line service, will hardly be greater than the reserve which good business management will demand.

The following table shows the annual revenues which will result from the present installation under the rates now in effect and under the rates which the company wishes to put in effect.

REVENUES OF FAIRBURY EXCHANGE.

(With Installation as of March 1, 1914.)

	<i>Present rates</i>		<i>Proposed rates</i>	
	<i>Rates</i>	<i>Revenues</i>	<i>Rates</i>	<i>Revenues</i>
65 independent business telephones....	\$24	\$1,560	\$24	\$1,560
7 two-party business telephones.....	18	126	18	126
329 independent residence telephones...	12	3,948	15	4,935
154 two-party residence telephones.....	9	1,386	12	1,848
42 mixed lines (business and residence)	30	1,260	30	1,260
15 extension telephones	6	84	6	84
12 special lines .....	...	141	.....	141
624		\$8,505		\$9,954

The increase in revenues from the proposed increase in independent line and two-party line residence service will amount to \$1,449 per annum, and of this amount \$516 will be required to cover the salary of an additional operator, increase in office rent and proposed increase in the salaries of manager and repair men.

It is very doubtful whether the utility can continue to furnish adequate telephone service at as low cost as indicated above. If costs as low as these are continued it will undoubtedly be at the expense of proper maintenance of the plant. On the basis of the present operating earnings the property is not producing enough revenue to cover operating expenses and depreciation and have a fair return for interest and profits.

It is essential that immediate improvements be made to the plant, particularly that part of the plant on the north side of the city of Fairbury, and it was brought out at the hearing that the petitioner is unable to secure the necessary funds to make extensions and improvements by reason of the unattractiveness of such investment.

In the light of the facts as shown, the petitioner is unquestionably entitled to some immediate relief. However, it would be unfair to the people served by this utility to pay the increased rate for service until the petitioner shall improve the condition of the plant and place the property under competent management.

An equitable rate schedule should be established which will yield a return to the company sufficient to meet all factors of expense and provide a reasonable return on the investment. However, by reason of the present condition of part of the plant and the absence of standard accounting methods and business practices, it is deemed advisable by the Commission to grant only temporary relief at this time, and determine the proper schedule of rates at such time as the petitioner has made the necessary repairs and improvements to the property and such changes in its methods of management, accounting and general business practices as to meet the requirements of the Commission.

It is therefore, this fifth day of June 1914, by the State Public Utilities Commission of Illinois,

Ordered, That the Fairbury Telephone Company of Fairbury, Illinois, be authorized to suspend the schedule of rates for telephone service now in effect and substitute therefor the following schedule:

<i>Classification:</i>	<i>Rates</i>
Single line business telephones.....	\$2 00 per month
Two-party line business telephones.....	1 50 per month
Single line residence telephones.....	1 25 per month
Two-party line residence telephones.....	1 00 per month
Extension telephones	50 per month

It is further ordered, That the petitioner is to make such improvements to the property as are necessary or as may later be determined to be necessary by the Commission and that the petitioner immediately make such changes in its methods of management, accounting and general business practices as shall meet the requirements of the Commission.

By order of the Commission, this fifth day of June, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE WAVERLY TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2336.

Granted June 5, 1914.

**Elimination of Discrimination—Abolition of "Combination Rates"—
Discontinuance of Special Rate to Post-Office.**

OPINION AND ORDER.

The application of The Waverly Telephone Company sets forth that the petitioner is managing and operating a telephone system in the towns of Waverly, Loami, Palyra and Franklin.

The petition further shows that said company has been furnishing service to five or six subscribers at less than the regular rates, four of them being so-called "combination rates" and one of them a special rate for the post-office at Loami.

The petitioner prays for authority to change these rates to the regular rates in force.

This case came on for hearing before the Commission on May 20, 1914, at Springfield, Illinois. The Commission having heard the testimony in the case and being fully advised in the premises,

It is hereby ordered, That The Waverly Telephone Company shall abolish the so-called "combination rates" and shall charge for services at the post-office at Loami the regular rate of \$1.00 per month.

By order of the Commission, this fifth day of June, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE NATIONAL TELEPHONE AND ELECTRIC COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2244.

Decided June 5, 1914.

**Impairment of Obligation of Contract—Abrogation of Contract Fixing
Discriminatory Rate by Passage of Statute Prohibiting
Discrimination in Rates.**

Held: That a contract by which stockholders in a telephone company transfer their interest in consideration of an agreement that they shall

thereafter receive service at a rate specified therein, is made subject to the exercise of the police power by the State, and where the rate fixed by the contract is discriminatory, the passage, under the police power, of a statute prohibiting discrimination in rates, abrogates the contract.*

REHEARING.

The original petition filed herein shows that eighty subscribers of the Clinton exchange of petitioner have been receiving service at the rate of \$12.00 per annum and that said rates are lower than the regular rates in effect for the same class of service. Upon the first hearing of this matter, March 31, 1914, it appeared that these subscribers owned their own telephones and upon that question an order† was issued April 2, 1914, granting the application and authorizing the charging of the standard rate with no reduction on account of the ownership of the telephones. On April 20, 1914, the Mayor of Clinton filed a motion for a rehearing and on April 21, 1914, J. M. McSweeney, attorney for the eighty subscribers affected, also filed a motion for rehearing. Both motions set forth the fact that a contract existed fixing said rates.

A hearing on said motions, which was treated as a rehearing by the Commission and by all parties interested, was held May 18, 1914, at the offices of the Commission at Springfield, Illinois. *Mr. Ben B. Boynton*, attorney, appeared in support of the petition and *Messrs. E. J. Sweeney* and *Fred Ball*, attorneys, appeared for the eighty subscribers.

By stipulation the following facts were agreed upon by the parties: About eighteen years ago a telephone company was organized at Clinton by the name of The Clinton Mutual Telephone Company. Each subscriber to this company obtained a share of stock and in payment therefor paid into the company \$30.00. Upon the establishment of a night and day service each of the original subscribers who were stockholders paid \$12.00 per year for their tele-

* Editor's headnote.

† Printed in Commission Leaflet No. 30, at page 1206.— Ed.

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phones. Other subscribers who were not stockholders were required to pay \$18.00 a year per telephone. One, J. D. Rogers, managed the company and in 1901 sold the same to the Farm and City Telephone Company, the predecessor of the petitioner; the contract provided that in consideration of the stockholders transferring their interest in the company to the Farm and City Telephone Company, they should have, and continue to have, telephone service from each telephone then owned by them, at the rate of \$12.00 per year.

The contention of the subscribers is that they have a vested right to that rate, that to raise the rate from \$12.00 per year to \$18.00 per year would impair the obligation of their contract and would deprive them of their equitable interest in the property.

The Nebraska [State] Railway Commission in the case decided March 23, 1909, and reported in 2 Nebr. St. Ry. C. R. 291,* held that a contract with the former owners of an exchange providing that in consideration of the transfer of their property these former owners should never be charged more than \$1.00 per month for business telephone service, the regular business rate being \$1.50, constitutes unjust discrimination, and any obligation that may have resulted from the contract was abrogated by the passage of the railway commission act.

The opinion of the Attorney-General of Nebraska upon the question was adopted by the Nebraska Commission. Among other things the Attorney-General held as follows:

"My judgment is that neither a verbal nor a written agreement to this effect is valid at the present time. It will be presumed that the telephone company that made such an agreement and the persons by whom the exchange was sold did so with a knowledge of the authority of the legislature to establish reasonable rates for common carriers and to prevent unjust discrimination. When the legislature acted and fixed, either directly or indirectly, through the Railway Commission, another and different rate of service than that established by the company itself, or

* *Opinion No. 12 of Attorney-General: In re Farmers' and Merchants' Telephone Company*, printed in II. Commission Telephone Cases, at page 648.—ED.

when it passed an act to prevent unjust discrimination, any such contract yields to such legal inhibition and becomes nugatory.

The principle involved in this question was determined by the Supreme Court in the case of *State v. Martyn*, (Neb.) 117 N. W. 719. In that case it was contended that Martyn was entitled to receive and the railroad company entitled to give transportation by reason of a contract made prior to the enactment of the anti-pass law; that the anti-pass law was unconstitutional because it disturbed vested rights arising out of the contract previously made and that the anti-pass law impaired the obligations of contract.

* * * * * * *

The court in the case above cited says:

It is also well settled that the internal commerce of a State — that is the commerce wholly confined to and carried on within the limits of a single State — is as much under state control as foreign or interstate commerce is under the control of the general government. * * * The exercise of this power necessarily includes the right to interfere with contract and property rights so far at least as may be necessary to prevent extortion and discrimination. From even a cursory examination of the several acts of our legislature on this subject, it is apparent that the contract under consideration was, and is, discriminatory in its nature. We find that like contracts have been frequently disclosed to be so. (*State v. Martyn*, 117 N. W. 722.)

I am therefore led to the conclusion that this contract, being in the nature of an unjust discrimination, is contrary to that portion of the railway commission act which expressly forbids the same, and if said contract was ever legal and binding on the parties whether in parole or in writing, it is abrogated by the statute to which I have referred."

The Interstate Commerce Commission in the case of *Shoemaker v. The Chesapeake and Potomac Telephone Company*, 20 I. C. C. R. 614,* held that contracts between old subscribers and the telephone company entered into prior to the regulation by Congress and valid when made, cannot, if Congress has undertaken to regulate the rates and practices of telephone companies, be accepted as now justifying different charges as between different subscribers similarly situated, such undue discrimination being forbidden by the act, and are illegal.

In the case of *Louisville and Nashville Railroad Company v. Mottley*, 219 U. S. 467, where the railroad company

* Printed in Commission Leaflet No. 1, at page 25.— Ed.

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had given life passes to Mottley and his wife as compensation for damages sustained, said passes being given before the passage of the Interstate Commerce Commission Act, the Supreme Court on Page 478 says:

"It is said, however, that, as the contract of Mottley and wife with the railroad company was originally valid, it cannot be supposed that Congress intended by the act of 1906 to annul or prevent its enforcement. But the purpose of Congress was to cut up by the roots every form of discrimination, favoritism and inequality, except in the cases of certain excepted classes to which Mottley and his wife did not belong, and which exceptions rested upon peculiar grounds. Manifestly, from the face of the commerce act itself, Congress, before taking final action, considered the question as to what exceptions, if any, should be made in respect of the prohibition of free tickets, free passes and free transportation. It solved the question when, without making any exception of *existing contracts*, it forbade by broad, explicit words *any* carrier to charge, demand, collect or receive a 'greater or less or *different* compensation' for *any* services in connection with the transportation of passengers or property than was specified in its published schedule of rates. The Court cannot add an exception based on equitable grounds when Congress forebore to make such exception. *Yturbide v. United States*, 22 How. 290, 293.

* * * * *

It is not determinative of the present question that the commerce act as now construed will render the contract of no value for the purpose for which it was made."

"* * * it was said in *Legal Tender Cases*, 12 Wall. 550, 551, that 'as, in a state of civil society, the property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority.'

These principles control the decision of the present question. The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable, or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations is inconceivable. The framers of the Constitution never intended any such state of things to exist."

The case of *Fitzgerald and Company v. Grand Trunk Railroad Company*, 63 Vt. 167,* the Supreme Court of that State said:

“ There can, in the nature of things, be no vested right in an existing law which precludes its change or repeal, nor vested right in the omission to legislate upon a particular subject which exempts a contract from the effect of subsequent legislation upon its subject matter by competent legislative authority. *Cooley, Constitutional Limitations*, 284, 574; *Thorpe v. Railroad Company*, 27 Vt. 140; *Ogden v. Saunders*, 12 Wheaton 214; *State v. Holmes*, 38 N. H. 225.”

Sections 37, 38 and 39 of the “*Act to provide for the regulation of public utilities*” in this State prohibit and forbid any public utility from charging any more or less than the published rate and from discriminating as to rates. No existing contracts are excepted from its provisions. The statute was passed by the legislature in the exercise of the police powers of the State. (*Munn v. Illinois*, 94 U. S. 113). The police power cannot be contracted away. (*Chicago v. Chicago Union Traction Company*, 199 Ill. 259). This statute being passed in the legitimate exercise of the police powers of this State abrogates all contracts that fix discriminatory rates. (*Atchison, Topeka and Santa Fe Railway Company v. Bell*, et al., 120 Pac. 987; 38 L. R. A. N. S. 351; *Manigault v. Springs*, et al., 199 U. S. 473; *Armour Packing Company v. United States*, 209 U. S. 56; *Chicago, Burlington and Quincy Railroad Company v. United States*, 209 U. S. 90.)

The Commission finds that the contracts in this case are discriminatory and that the Illinois public utilities commission law abrogates them.

It is, therefore, ordered, That the petitioner shall charge each of the eighty subscribers the regular rates for the class of service furnished. The above changes in rates and charges shall be published as provided by law and shall become effective as of July 1, 1914.

By order of the Commission, this fifth day of June, 1914

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE PLAINVILLE TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2379.

*Decided June 5, 1914.***Insufficient Revenue — Increase in Rates.**

Application to increase rates within the village of Plainville by \$1.00 per year and to increase the charge for switching farmer line stations by 60 cents per year.

The Commission found that the existing rates were insufficient and that the net revenue which would result from charging the proposed rates would be materially reduced by the necessity of increasing the salaries of operators on account of the extension of the service from sixteen hours to eighteen hours daily.

The schedule of rates proposed by the applicant was, therefore, authorized.*

OPINION AND ORDER.

Application for authority to change rates was filed by the petitioner April 21, 1914. Application sets forth that the petitioner is a public utility owning and operating the telephone exchange in the village of Plainville, Adams County, Illinois, and that it is not operated for profit. The lawful rates in force and effect as shown by the application are as follows:

<i>Classification</i>	<i>Rates</i>
One telephone, one drop.....	\$1 00 per year
Two telephones, one line.....	3 60 per year
Three telephones, one line.....	3 16 per year
Four telephones, one line.....	2 66 per year
Five telephones, one line.....	2 60 per year
Six telephones, one line.....	2 28 per year
Seven telephones, one line.....	2 16 per year
Eight telephones, one line.....	2 04 per year
Nine telephones, one line.....	1 92 per year
Ten telephones, one line.....	1 80 per year
Switching single message, where switching is paid for by message, 10 cents per message, where line is not in exchange.	

* Editor's headnote.

Application further sets forth that the revenue from these rates is not sufficient to pay the operating expenses of the utility and asks authority to put into effect the following schedule of rates:

<i>Classification</i>	<i>Rates</i>
Town lines, each.....	\$3 00 per year
Town drops, each.....	5 00 per year
All farmer lines (switching fee).....	2 00 per year

Hearing on this matter was held before the Commission at Springfield, Illinois, on May 20, 1914. *Mr. C. E. Beavers*, a stockholder and *Mr. Ralph Six*, attorney, appeared for the petitioner. No one appeared objecting.

Petitioner asked leave to amend the petition and substitute a rate of \$2.40 per year for switching farmer line stations, in lieu of the rates of \$2.00 per year as set forth in proposed schedule. Permission to amend petition was granted.

Under the proposed schedule the rates for service within the village are increased \$1.00 per year and the charge for switching farmer line stations is increased 60 cents per year. It developed from the testimony presented at the hearing that all lines and telephones are owned by the subscribers; that the petitioner owns only the switchboard and that such switchboard and other central office equipment is valued at \$250. The petitioner is serving 224 subscribers classified as follows:

<i>Classification</i>	<i>Number</i>
Independent line telephones in village.....	23
Party line telephones in the village.....	4
Farmer line telephones (owned by subscribers).....	197
TOTAL	224

It also developed that all subscribers were notified of the proposed changes in rates and according to the testimony of the petitioner no objections have been made.

The revenue derived from the schedule of rates now in force and effect is shown by the following table:

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<i>Classification</i>	<i>Rates</i>
23 telephones in village at \$4.00 per year.....	\$92 00
Four telephones in village at \$2.00 per year.....	8 00
197 farmer line telephones.....	354 00
TOTAL	\$454 60

The actual operating expenses of the petitioner as shown by a statement submitted at the hearing are as follows:

Rent of house including exchange quarters and living rooms for operator	\$72 00
Two operators	360 00
Maintenance and repairs.....	48 00
Depreciation on central office equipment.....	25 00
TOTAL	\$505 00

according to the above statement there is a net annual loss of \$41.00.

The revenue that will result from the proposed schedule of rates is shown in the following table:

23 telephones in village at \$5.00 per year.....	\$115 00
4 telephones in village at \$3.00 per year.....	12 00
197 farmer line telephones at \$2.40 per year.....	472 80
TOTAL	\$599 80

which, according to the statement of annual expenses set forth above, will leave a net revenue of \$135.80.

It appears that until recently the utility furnished a sixteen-hour service, that is, the exchange was open each day from 5:00 A.M. until 9:00 P.M. and on account of the demand on the part of the subscribers for a more extensive service an eighteen-hour service is now given, the exchange opening at 4:00 A. M. and closing at 10:00 P. M. In order to maintain this service it will be necessary for the utility to increase the salaries of the operators \$120 per year, which will reduce the net revenue as shown by the above statement

to \$15.80 and this amount will be applied to maintenance and repairs.

It is, therefore, ordered, That the proposed schedule of rates as set forth above shall become effective on July 1, 1914.

By order of the Commission, this fifth day of June, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE PIKE COUNTY
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE CON-
CESSION CHARGES AT ITS PEARL EXCHANGE TO ITS STAND-
ARD RATES.

No. 2450.

Granted June 5, 1914.

**Discriminatory Practices — Elimination of Concessions to Subscribers Own-
ing Instruments — Authorization of Payment of Rental by the Com-
pany for Instruments Owned by Subscribers — Determina-
tion of Maximum Rental for Instruments —
Switching Charge for Farmer Lines.**

OPINION AND ORDER.

The petition filed herein shows that certain concession charges are in effect at the petitioner's exchange at Pearl, Illinois.

The petitioner further shows that certain subscribers who own their own instruments are allowed a reduction of \$3.00 per year from the regular rate and avers the fact to be that the practice of allowing this reduction has become so universal over its entire system that it would be detrimental to its business to change same at once.

The petition also sets forth the fact that the switching rate at this exchange for rural subscribers, on farmer lines owned and controlled by them to city limits, at present is \$2.00 per year, and that the regular rate for such service over its entire system is \$3.00 per year. The petitioner asks for authority to abolish concession charges in effect

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and to substitute therefor the regular rate in effect for the class of service furnished, and to raise the switching rate from \$2.00 to \$3.00 per year.

On June 2, 1914, the case came on for hearing at the office of the Commission at Springfield, Illinois.

E. D. Glandon, manager of petitioner, and *Ben B. Boynton*, attorney for petitioner, appeared in support of the petition. No one appeared in opposition.

The Commission, having heard the testimony and being fully advised in the premises, finds that, under the facts and circumstances appearing in this case, the concession charges set forth in the petition are discriminatory and should be abolished and the standard rates substituted therefor.

That under the law it is a discrimination to allow the owners of telephones a reduction on account of such ownership. However, this does not prohibit the company from renting the telephone, provided no more than a reasonable rental is paid therefor, and in this case, where the evidence shows that the cost of each instrument to the owners is approximately \$10.00, the rental should not exceed \$1.60 per year for each telephone.

That the switching rate of \$3.00 per year is justifiable in this case.

It is, therefore, ordered, That the concession charges above mentioned be abolished and the petitioner charge its subscribers for each telephone installed the regular rate for the class of service furnished.

It is further ordered, That no reduction in rates and charges be allowed on account of the ownership of telephones by the subscribers, and that the petitioner be authorized to rent said telephones from the subscribers at a rental not exceeding \$1.60 per telephone.

It is further ordered that the petitioner be authorized to charge a rate of \$3.00 per year for switching rural subscribers on farmers' lines owned and controlled by them; and charges shall be published as provided by law; and abol-

ishment of concession charges and reductions allowed to subscribers owning their own telephones shall become effective on the date of this order; and the change in switching rates shall become effective on August 1, 1914.

By order of the Commission, this fifth day of June, 1914.

Dated at Springfield, Illinois.*

IN THE MATTER OF THE APPLICATION OF THE PEOPLE'S MUTUAL
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2484.

Granted June 5, 1914.

Discontinuance of Discrimination in Favor of Stockholders.

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates and charges as applied to stockholders and non-stockholders. Application filed May 9, 1914, sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in the village of Davis, Stevenson County, Illinois, and that as such public utility it is subject to the provisions of an "*Act to provide for the regulation of public utilities.*"

Application sets forth that the rates charged stockholders for all classes of service are less than the rates charged non-stockholders, and the petitioner asks authority to change the rates charged stockholders in order that there may be

* A similar opinion and order were issued *In the Matter of the Application of Pike County Telephone Company for Authority to Change Concession Charges at its Nebo Exchange to its Standard Rates.* No. 2451. June 5, 1914.

The elimination of concessions to subscribers owning instruments and the payment of instrument rentals was authorized upon application of the *Pike County Telephone Company* in three other instances: *Milton* exchange (No. 2452); *Pleasant Hill* exchange (2453); *Rockport* exchange (2454); the orders in each instance being dated June 5, 1914.—ED.

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no discrimination in rates as applied to stockholders and non-stockholders.

In accordance with the ruling* of this Commission it is unlawful to exact a higher rate from subscribers who are not stockholders, directors and officers of the public utility than from subscribers who are stockholders, directors and officers; the subscriber who is a stockholder has no rights or privileges which are denied to a subscriber who is not a stockholder; and the stockholder must look to the profits of the business for his return on his investment. A public hearing in this case is considered unnecessary.

And it is, therefore, This fifth day of June 1914, by the State Public Utilities Commission of Illinois,

Ordered, That the discriminatory rates and charges as applied to stockholders and as set forth in the application of the petitioner, the People's Mutual Telephone Company, are to be immediately discontinued.

By order of the Commission, this fifth day of June, 1914.

Dated at Springfield, Illinois.†

* Conference Ruling No. 8, April 24, 1914, printed in Commission Leaflet No. 31, at page 31.— Ed.

† Similar orders were issued upon applications by the following companies, the orders in each instance being dated June 5, 1914:

Easton Farmers' Mutual Telephone Company (No. 2465).

Fruitville Telephone Company (No. 2466).

Crab Orchard Telephone Company (No. 2485).

Washington County Mutual Telephone Company (No. 2486).

Star Telephone Company (No. 2530).

Farmers' Telephone Company (No. 2531).

Dahlgren People's Telephone Company (No. 2534).

Dawson Township Mutual Telephone Company (No. 2537).

Cardova Telephone Company (No. 2543).

Vernon and Shobonier Telephone Company (No. 2557).

Mutual Telephone Company of White Health (No. 2562).— Ed.

COMMERCIAL TELEPHONE AND TELEGRAPH COMPANY *v.* VILLAGE OF CROSSVILLE *et al.*:

In re APPLICATION FOR AN ORDER RESTRAINING RESPONDENTS FROM INTERFERING WITH THE OPERATION OF PETITIONER'S TELEPHONE EXCHANGE IN THE VILLAGE OF CROSSVILLE.

No. 2140.

Decided June 12, 1914.

What Constitutes a Public Utility — Operation without Authority — Rates Charged by Company Legally Occupying Field.

Complaint of Commercial Telephone and Telegraph Company praying for an order restraining the respondent from operating a telephone system in Crossville without having secured authority to do so from the Commission.

The respondent alleged that it was not operating as a public utility and not operating for profit and was, therefore, not subject to the jurisdiction of the Commission, and further that the complainant had increased its rates without authority.

It appeared in evidence that anyone could secure service from the respondent by paying his proportionate share of the cost of operation.

Held: That respondents are undertaking to operate a telephone system for public use, *i. e.*, a public utility, in a village already served by another company, and without first having secured from the Commission a certificate of public convenience and necessity.

That the complainant has increased its rates without authority.

Ordered, That the respondents discontinue operation until they shall have secured a certificate and that the complainant discontinue charging the increased rates.

The Commission expressly omitted to pass upon the question as to whether the respondents would be entitled to a certificate upon proper application.*

OPINION AND ORDER.

The Commercial Telephone and Telegraph Company, petitioner, avers that it is operating a telephone exchange in the village of Crossville, Illinois, as a successor to the Westfall Telephone Company, under and by virtue of an ordinance granted by said village to the Westfall Telephone Company on March 7, 1910; that on July 25, 1913, said Westfall Telephone Company sold and transferred its property

* Editor's headnote.

and assigned its rights to the above mentioned ordinance to the petitioner; that thereupon the petitioner took possession of said property and has up to the present time operated said telephone exchange in compliance with the terms of said ordinance; and that the petitioner is furnishing adequate service at reasonable rates.

The petition further avers that the individuals made respondents herein, on or about January 20, 1914, erected on the streets and public ways of said village, poles, and strung wires thereon and connected said wires with the switchboard which was located in the home of one of the respondents in said village and that without legal grant or permission said respondents are attempting to maintain and operate a telephone exchange and render telephone service in the village of Crossville.

The prayer of the petitioner is that the Commission shall issue an order directed to the village of Crossville and the individuals made respondents herein restraining them from constructing telephone lines and from operating a telephone exchange in the village of Crossville until duly authorized, as provided by law.

In their answer the respondents deny that the petitioner has been furnishing the telephone service at reasonable rates, and charge that the petitioner has since January 1, 1914, increased its rates, without authority of law, so that its present rates are now in excess of those in effect July 1, 1913. Respondents answer further as follows:

"Respondents admit that they have placed a switchboard in the residence of A. J. Mitchell of Crossville and have connected their own private lines thereto; that they are not conducting a public utility and have an absolute unqualified right to so do; that they have established a telephone exchange merely for the mutual advantage of themselves and their families and that it is not conducted for profit but that each of said parties pays a proportionate part of the expenses of the switchboard and in addition keeps up his own line; that they do not charge any toll fee; do not serve, or attempt to serve, the general public in any way; make or collect no profit on their venture; and are not within the jurisdiction of the public utilities law, of the State of Illinois."

The hearing was heard at the office of this Commission at Springfield, Illinois, February 17, and 18, 1914. *John*

Lynch, attorney, appeared for the petitioner; *C. S. Conger, Jr.*, attorney appeared for the respondents.

The first question presented in this case is as to whether the respondents are operating a public utility. It appears from the testimony that they are occupying the streets and public ways of the village of Crossville with their poles, wires and appliances and have connected said telephone wires with a switchboard which they have installed in said village.

It also appears that at the time of the hearing there were several farmers' lines connected with said switchboard and that some of the doctors and merchants of the village are connected with said exchange; that other of the business men of the village are preparing to connect with said board. In fact the testimony shows that all of the merchants of the village except one are preparing to connect with said switchboard.

It further appears from the testimony that practically any one located in the village can secure telephone service from the respondent by paying his *pro rata* of the cost of the system. At the present time there are about 140 telephones connected with respondents' switchboard in the village and the testimony shows that the respondents are expecting to increase this number to 240, with the result that a telephone user on any of the farmers' lines that connect with said switchboard will then be able to communicate with practically all the merchants and with as many of the other citizens in the village of Crossville as may care to connect with said switchboard.

It quite clearly appears from the facts and circumstances in this case that the individuals made respondents in this case are installing and seeking to operate a telephone system for public use in a village of about six hundred people, which village is already served by one telephone company, without first securing from this Commission a certificate of public convenience and necessity.

The Commission being fully advised in the premises finds:

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FIRST: That the respondents herein are installing and seeking to operate a public utility without having secured from this Commission a certificate of public convenience and necessity;

SECOND: That the petitioner has without authority from this Commission increased its rates that were in effect on July 1, 1913.

It is, therefore, ordered, That the individuals made respondents herein, shall discontinue the operation of a telephone system in the village of Crossville, Illinois, until such time as they shall have secured from this Commission a certificate of public convenience and necessity. The Commission, however, does not at this time pass upon the question as to whether the respondents would be entitled to such a certificate upon proper application therefor being made.

It is further ordered, That the petitioner shall discontinue charging its increased rates and shall substitute therefor the rates that were in effect on July 1, 1913.

By order of the Commission, this twelfth day of June, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE FAYETTE HOME TELEPHONE COMPANY FOR AN ORDER RESTRAINING WILLIAM KEPNER *et al.* FROM CONSTRUCTING AND OPERATING A TELEPHONE SYSTEM IN THE VILLAGE OF LACLEDE, ILLINOIS, WITHOUT FIRST SECURING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

No. 2181.

Decided June 12, 1914.

What Constitutes a Public Utility — Operation without Authority of Commission — Unsatisfactory Service of Company Legally Occupying Field.

Complaint by The Fayette Home Telephone Company asking that the respondents be restrained from constructing a telephone system in the village of Laclede without securing a certificate of public convenience and necessity.

The respondent alleged that the complainant's plant and equipment were in a dilapidated condition and that the system which the respondents proposed to install would be operated on a purely mutual basis and would not therefore be within the jurisdiction of the Commission.

It appeared that the respondents proposed to install a system with long distance connections and to render service to all parties taking stock in the respondents' company, this privilege being open to all desiring service. The system was not to be operated for profit.

It further appeared that the complainant's service was inadequate and unsatisfactory and that its equipment was in poor condition, but that an effort in good faith was being made by the complainant to improve its equipment and service and that with the improved service proposed the complainant would be in a position to afford adequate and satisfactory service.

The Commission held that the system proposed to be installed by the respondents was in effect a public utility and directed the respondents to discontinue the installation of the system until a certificate of public convenience and necessity should have been secured from the Commission.

The complainant was ordered to furnish adequate service and to that end to make the necessary improvements in its plant.

The Commission expressly omitted to pass upon the question as to whether the respondents would be entitled to a certificate upon proper application.*

OPINION AND ORDER.

The petition in this case avers that The Fayette Home Telephone Company now owns and operates a telephone exchange in the village of Laclede, Illinois, and that said exchange is connected with several other towns in that vicinity and that through said exchange said petitioner is adequately serving that community and at reasonable rates.

The petition further avers that the village of Laclede has a population of about two hundred and that the petitioner

"has every reason to believe and does believe that a company has been organized with William Kepner (one of the respondents herein) as president, to construct another system and to put in another telephone exchange in said village of Laclede, and that said company is now endeavoring to purchase supplies for the erection and construction of said telephone system."

The prayer of the petition is that said telephone company, the name of which is stated to be unknown to the

* Editor's headnote.

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petitioner but of which William Kepner is said to be president, be restrained and prevented from purchasing supplies and from constructing or erecting such additional telephone system in the village of Laclede until such time as said company shall obtain from this Commission a certificate of public convenience and necessity.

The respondents answered denying that the petitioner is furnishing adequate service and charging that the plant and equipment of the petitioner, including its poles, and wires are worn out and in a dilapidated condition; that many of its poles are broken down and that its wires are rusty and some of them are hanging from the poles; that many of its lines are laid upon fences and attached to trees, etc., and that on January 1, 1914, the petitioner notified its patrons that its rates for the various classes of service rendered would be increased.

The respondents admit that they propose and are preparing to establish another telephone system in the village of Laclede but claim that it will be on a purely mutual basis and that it will not come within the jurisdiction of this Commission.

This case came on for hearing before the Commission at Springfield on March 17, 1914. *G. T. Turner*, attorney, appeared for the petitioner, *Earl C. Huggins* appeared for the respondents.

The testimony in this case shows that the petitioner owns and operates telephone exchanges in the villages of Laclede, St. Elmo and Loogootee, and that each of said exchanges is connected with the other two; that petitioner has about four hundred subscribers to its own exchange and that it performs switching service for several farm and rural lines that connect with its exchanges in the above villages. It appears that a subscriber to one of petitioners' exchanges can secure, without extra charge, communication with about 2,200 telephones in that locality.

The testimony further shows that at the time of the hearing some of petitioner's lines were in somewhat dilapidated condition, many of the poles were down and some of the

wires were broken and hanging from their fastenings; that some of the lines were entirely removed from the poles and were left lying along the top of fences or attached to trees, etc. This condition in part, at least, seems to be due to unusually heavy sleet storms that occurred in that locality during the months of January and February, 1914.

It appears that the petitioner has made some provision for the repair or replacement of its equipment and for improvement of its service, and to that end it has installed a new switchboard in the village of Laclede. It has also done considerable reconstruction work in that village, having entirely replaced one line in the village. At the time of the hearing petitioner had on hand about three thousand dollars' worth of material with which to carry on future repairs and improvement of its lines and equipment.

With reference to the nature and the character of the telephone system which the respondents are seeking to establish, it appears from the testimony that Mr. Kepner and his associates propose to install in the village of Laclede a switchboard to which they expect to connect several of the farmers' lines that now connect with the switchboard of the petitioner in that village. The new exchange would not be operated for profit but it would be connected with various farmers' lines in that locality, and its aim would be to give quite extensive service. This is stated by Mr. Kepner in the following language:

"We want to be neighborly. We want to go all over the country. That is our intention. If we would have three exchanges that is what we want."

It also appears from Mr. Kepner's testimony that anyone in the community that desired service from the proposed exchange of the respondents could secure the same by taking stock in respondent's company; that no one would be barred from coming into the new company and securing service therefrom, if such service was desired. It also appears that the respondents propose to connect with long distance telephone companies, so that communication may be had with points not reached by their own line. No part

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of the toll charge for such long distance service, however, would be retained by the respondent company.

While the testimony shows that the service furnished by the petitioner is neither adequate nor satisfactory, and that its poles, wires and other equipment are not in good condition, yet it further appeared at the hearing that an effort in good faith was being made by the petitioner to improve its equipment and service, and in fact that certain improvements had been made and additional work was then under way. It also appears that with the improved service which the petitioner proposes to furnish it will be in position to fully and adequately serve the village of Laclede and the surrounding community with satisfactory telephone service.

The Commission is of the opinion that the telephone plant proposed to be constructed by the respondent is in fact a public utility within the meaning of the "*Act to provide for the regulation of public utilities.*"

The Commission have considered the testimony and the arguments of counsel, and being fully advised in the premises,

Does hereby order, That the respondents are without authority to install or operate a telephone system in the village of Laclede, Illinois, and the surrounding community; and that they shall discontinue the installation or operation of a telephone system in that community until such time as they shall have secured from this Commission a certificate of public convenience and necessity. This Commission, however, does not at this time pass upon the question as to whether the respondents would be entitled to such a certificate upon proper application therefor being made.

It is further ordered, That the petitioner, The Fayette Home Telephone Company, shall forthwith furnish adequate service, and to that end it shall make such improvements in its plant and equipment as may be necessary to enable it to comply with this order.

By order of the Commission, this twelfth day of June, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF COOKSVILLE TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2233.

Granted June 12, 1914.

Revision of Schedule to Provide for Depreciation and Return on Investment — Elimination of Discrimination in Favor of Stockholders — Increase in Rate for Business Telephones — Establishment of Rates for Extension Telephone and Extension Bells.

Application to discontinue present schedule and substitute therefor a schedule eliminating discrimination in favor of stockholders and providing for an increase of \$1.00 per year in the rate for business telephones and for the establishment of rates for extension telephones and extension bells.

It appeared that the applicant had never made any provision for depreciation and had never paid any dividends and that it desired to revise its schedule in order to make provision for both of these in the future. No objection to the proposed schedule was made by the subscribers.

Application granted.*

OPINION AND ORDER.

The application in this matter was filed March 7, 1914, and sets forth that the applicant is a corporation organized and doing business under the laws of the State of Illinois, with headquarters at Cooksville, and is a public utility engaged in the management and operation of a telephone system in that city and vicinity. As set forth in the application the rates of the applicant now in effect are as follows:

<i>Classification</i>	<i>Rates</i>
Business telephones, stockholders.....	\$9 00 per year.
Residence telephones, stockholders.....	6 00 per year.
Business telephones, non-stockholders.....	15 00 per year.
Residence telephones, non-stockholders.....	15 00 per year.

The application sets forth that the rates charged to stockholders are discriminatory and that it is the desire of the applicant to comply with the Illinois public utilities commission law and charge all of its patrons the same rate for the same class of service. Application further sets

* Editor's headnote.

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forth that the applicant desires to establish a sinking fund or depreciation reserve fund and also to pay a reasonable dividend to the stockholder.

The applicant asks authority to put into effect the following schedule of rates:

<i>Classification</i>	<i>Rates</i>
Business telephones to all subscribers.....	\$16 00 per year.
Residence telephones to all subscribers.....	15 00 per year.
Extension telephones to all subscribers.....	6 00 per year.
Extension bells to all subscribers.....	1 50 per year.

Hearing was held at Springfield, Illinois, on March 31, 1914. *Frank Gillespie*, attorney, and *Thomas Arnold* appeared for the applicant. No one appeared objecting.

The discussion at the hearing related largely to the discriminatory rates that apply to stockholders. It developed that the company has 250 subscribers; 150 of these are stockholders and 100 are non-stockholders. The physical property consists of a lot upon which there is located the exchange building and a small residence which is occupied by the manager of the company, and the pole lines, wires, fixtures and equipment necessary to furnish service to 250 subscribers.

According to the testimony of the manager, the entire plant is in good condition and the present value of the physical property is about \$10,000. It further developed that the utility has never made any provision for depreciation and has never paid a dividend to its stockholders. The proposed schedule of rates was adopted by the directors of the company on January 10, 1914, and no objection has been made by any of the stockholders or non-stockholders who are subscribers to the service.

The schedule provides for an increase of \$1.00 per year on the present rates for business telephones and the establishment of a rate for extension telephones and extension bells as well as the discontinuance of discriminatory rates.

In accordance with the ruling* of this Commission it is

* Conference Ruling No. 8, printed in Commission Leaflet No. 31, at page 31.—ED.

unlawful to exact a higher rate from subscribers who are not stockholders, directors and officers of a public utility than from subscribers who are stockholders, directors and officers of the public utility; the subscriber who is a stockholder has no rights or privileges which are denied to a subscriber who is not a stockholder and a stockholder must look to the profits of the business for his return on his investment.

It is, therefore, ordered, That the discriminatory rates and charges with respect to stockholders are to be discontinued and the petitioner is authorized to change the rates for business telephones from \$15.00 per year to \$16.00 per year.

It is further ordered, That the petitioner be, and it hereby is, authorized to make a rate of \$6.00 per year for extension telephones and a rate of \$1.50 for extension bells.

The above rates shall go into effect on July 1, 1914, and shall be filed and published as provided by law.

By order of the Commission, this twelfth day of June, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE PITTSFIELD TELEPHONE EXCHANGE FOR AUTHORITY TO CHANGE CONCESSION CHARGES AT ITS PITTSFIELD EXCHANGE TO ITS STANDARD RATES.

No. 2449.

Granted June 12, 1914.

Discrimination—Abolition of Concessions—Discontinuance of Combination Business and Residence Rate—Rate of \$6.00 for Listing Extra Name in Directory Found Reasonable.

OPINION AND ORDER.

The petition filed herein shows that certain concession charges are in effect at the petitioner's exchange at Pittsfield, Illinois. These concessions are given to certain business telephones. The petition also sets forth the fact that

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certain business telephones are given a lower rate on account of the fact that the subscribers thereto have a residence telephone. The petitioner asks for authority to abolish the above rates and charges and to substitute therefor the regular rate in effect for the class of service furnished. The petitioner also asks permission to put into effect the following new rate:

Listing extra name in directory..... \$6 00 per year.

On June 2, 1914, the case came on for hearing at the offices of the Commission at Springfield, Illinois. *E. D. Glandon*, manager, for petitioner, and *Ben B. Boynton*, attorney, for petitioner, appeared in support of the petition. No one appeared in opposition.

The Commission having heard the testimony and being fully advised in the premises finds that under the facts and circumstances appearing in this case, the concession charges set forth in the petition are discriminatory and should be abolished, and the standard rates substituted therefor;

That the combination rate whereby telephone subscribers are allowed both business and residence telephones for less than the sum of the rates for the two classes of service is a discrimination against the subscribers who maintain but one telephone and the practice should be discontinued;

That the new rate asked for is reasonable and in accordance with the practice of other telephone companies doing business within this State.

It is, therefore, ordered, That the concession charges be abolished and the "combination rates" above mentioned be discontinued, and that the petitioner charge its subscribers for each telephone installed the regular rate for the class of service furnished.

It is further ordered, That the new rate of \$6.00 for listing extra name in the directory be authorized and approved.

The above changes in rates and charges shall be published as provided by law and shall become effective on the date of this order.

By order of the Commission, this twelfth day of June, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE FARMERS'
MUTUAL TELEPHONE COMPANY OF RANSOM, ILLINOIS,
FOR AUTHORITY TO CHANGE RATES.

No. 2483.

Dismissed June 12, 1914.

Assessment upon Stockholders in Lieu of Regular Rental Illegal.

Held: That the practice of exempting stockholders who own instruments from the payment of any fixed rates and the substitution therefor of an assessment, either fixed or indeterminate, to pay operating expenses, is illegal and should be discontinued;

That stockholders must be charged the same rates as other subscribers and look to the dividends upon their stock for any profit to be derived.*

OPINION AND ORDER.

In this case the hearing was held at the office of the Commission in the city of Chicago, on the twenty-seventh day of May, 1914. It appears from the petition that the lawful rates of this applicant now in effect are as follows:

Rented 'phones on metallic lines (quarterly in advance)	\$15 00 per year.
Rented 'phones on grounded lines (quarterly in advance)	12 00 per year.
Stockholders owning their own telephones (and assessment sufficient to meet running expenses and upkeep of lines generally)	5 00 per year.

The application requests authority to discontinue the rates above mentioned and to substitute the following:

Rented 'phones on metallic lines (payable quarterly in advance)	\$15 00 per year.
Rented 'phones on grounded lines (payable quarterly in advance)	12 00 per year.
Stockholders, assessment of (payable inside of thirty days under penalty of having telephones disconnected from line)	Amount to be fixed.

The Commission being fully advised in the premises finds that the practice of exempting stockholders who own their own telephones from any fixed rates or charge and of substituting for such rate an assessment to meet ex-

* Editor's headnote.

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penses of operation and maintenance, is an illegal practice and must be discontinued; that under the Conference Ruling* and other decisions heretofore made by this Commission, a stockholder cannot be given any greater or less or different rate than the rate imposed upon other subscribers, but must be left to the income derived from the stock for any profit which may be received; that this difficulty is not met by the substitution of an assessment of a fixed amount against stockholders.

It is, therefore, ordered, That the prayer of the petition be denied in so far as it levies an assessment at all against stockholders.

Second, That the regular rates shall be collected from stockholders from and after the date of this order.

By order of the Commission, this twelfth day of June, 1914.

Dated at Springfield, Illinois.

* Conference Ruling No. 8 printed in Commission Leaflet No. 31, at page 31.—ED.

INDIANA.

Public Service Commission.

THE PORTAGE HOME TELEPHONE COMPANY *v.* THE NORTH-WESTERN INDIANA TELEPHONE COMPANY.

No. 53.

Decided May 14, 1914.

Compulsory Physical Connection — Expense of Establishing and Maintaining Connection — Division of Interline Revenue — Terms of Connection Prescribed.

Upon complaint asking that the defendant be required to establish physical connection and interchange of messages between its lines and those of the plaintiff, it appeared that the plaintiff operated exchanges at Wheeler, Chesterton, Westville and Crisman and also operated a few telephones at Porter and Gary. The defendant had exchanges at Valparaiso and Chesterton and was about to establish an exchange at Wheeler. The defendant, although connected with other companies, refused to connect with the plaintiff on account of the alleged defective construction and condition of the plaintiff's plant.

It appeared that the plaintiff company had many patrons who were interested in Valparaiso, the county seat, and were desirous of telephonic connection with the business houses, physicians, attorneys and public officers in that city, and that the citizens of Valparaiso were desirous of connection with the patrons of the plaintiff company, but did not desire two exchanges in Valparaiso. It further appeared that the plaintiff's plant was in fair condition for a plant which had been in operation for a period of eleven years without rebuilding, except that, at the time of the hearing, the wires of the plaintiff at different points where they crossed over high tension wires of interurban railroads were not protected as the law provides they should be. After hearing and considering the evidence, the matter was suspended until the crossings over high tension wires were placed in good condition. When this had been done to the satisfaction of the Commission, both the plaintiff and defendant were informed that physical connection between the two companies would be ordered and were given thirty days within which to agree upon the terms of said connection.

The companies having failed to arrive at any agreement within the thirty-day period, the Commission thereupon ordered that physical connection between the plants of the defendant and the plaintiff be made at

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Wheeler by the defendant connecting one of its wires with the switchboard of the plaintiff, without expense to the plaintiff, said connection to be maintained and kept in good working order by the defendant at its own expense. The Commission further ordered that the respective companies should construct, connect, maintain and operate, each at its own expense, its lines, wires and connections in such a manner as to give to each company connection with all telephones on the plant of the other through the said Wheeler exchange.

It was further ordered: That the respective companies should jointly construct and maintain one or more trunk lines between the Wheeler switchboard of the defendant and the Wheeler switchboard of the plaintiff for the interchange of business between the Wheeler subscribers of the respective companies; that they should also construct and maintain as traffic might demand one or more trunk lines between the Chesterton switchboard of the defendant and the Chesterton switchboard of the plaintiff for the interchange of business between the Chesterton subscribers of the respective companies.

It was further ordered: That the toll charge for messages between the two companies should be the same as the rate at present in force, except that for messages between the subscribers of the different companies at the Wheeler exchange or between the subscribers of the different companies at the Chesterton exchange, the toll charge should be 5 cents per message to be divided equally between the two companies.

It was further ordered: That the charge on all toll messages, except those previously noted, should be divided on the basis of 25 per cent. to the company originating the message, the remaining 75 per cent. to be divided between the two companies in proportion to the mileage of wire over which the message passes. Provision was also made for the settlement of accounts and for messenger service.

It was further provided: That in the event that the one wire of the defendant connected with the switchboard of the plaintiff at Wheeler should not be of sufficient capacity to accommodate satisfactorily the business exchanged between the said companies, then the complainant should have the right to construct a second wire from Wheeler to Valparaiso to connect with the exchange of the defendant, and thereafter the division of tolls on a mileage basis between said companies in so far as the message might pass between Valparaiso and Wheeler should be divided equally between the said two points so long as two wires and no more were used.*

OPINION AND ORDER.

The plaintiff in this case has filed a petition for an order at the hands of this Commission for a physical connection with the Northwestern Indiana Telephone Company.

* Editor's headnote.

A hearing was had on the issues joined on the twenty-eighth day of July, 1913, at Indianapolis, the plaintiff appearing by *E. S. Miller*, its president, and the defendant by *H. R. Ball*, general manager, and *Mr. McGill*, its president.

The defendant objects to being required to connect with the plaintiff's system of wires on account of the defective construction and condition of the plant.

The facts are that the Portage Home Telephone Company has been in operation eleven years. It is incorporated and has an exchange at Wheeler, one at Crisman, one at Chesterton, one at Westville, and a few telephones at Porter and Gary, all in the northwestern part of Indiana, in Lake, Porter, and LaPort Counties. Wheeler is about eight miles northwest of Valparaiso and has a population of about three hundred and plaintiff has two hundred and ten telephones in its exchange at Wheeler. Chesterton is twelve miles northwest of Valparaiso, and has a population of ten or twelve hundred. The plaintiff has two hundred and thirteen telephones in its exchange at Chesterton.

Crisman is a small village ten miles west of Chesterton and seven miles north of Wheeler, and plaintiff has one hundred and ten telephones in its Crisman exchange.

Westville is eleven miles from Valparaiso in a northeasterly direction and plaintiff has one hundred and sixty telephones on its Westville exchange.

The Portage Home Telephone Company has altogether between six hundred and seventy-five and seven hundred telephones, and it has a toll station in the city of Valparaiso but has no exchange at that point and has been unable to secure a franchise so that it could construct and operate an exchange there.

Valparaiso is the county seat of Porter County and is a city of ten thousand population.

The defendant, the Northwestern Indiana Telephone Company, has an exchange and its principal place of business at Valparaiso. Each of said telephone companies have lines extending into the rural districts adjacent to

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their exchanges. The Portage Home Telephone Company charges \$1.00 per month for residence and \$1.25 per month for business telephones.

The Northwestern Indiana Telephone Company has an exchange at Chesterton, and has established or is about to establish an exchange at Wheeler. The plant of said company throughout is of high grade, and practically new. Said company has a wire from Valparaiso to Wheeler and one from Valparaiso to Chesterton. The business passing between the two companies between Chesterton and Valparaiso, if connected, would probably require more than one wire.

The capital stock of the plaintiff company authorized is \$50,000 with only \$24,000 issued, which is paid up and the company has no bond issue. It has continually paid dividends.

The defendant company has issued \$46,000 of preferred and \$93,000 of common stock; the stock is dividend paying and worth par.

The plaintiff company has many patrons who are interested in Valparaiso, their county seat, and are desirous of telephonic connection with the business houses, physicians, attorneys, public offices and residences of said city. And the business men and citizens of said city are desirous of telephonic connection with the patrons of the plaintiff company, but they do not desire two exchanges in said city. Any of the calls coming into Valparaiso over plaintiff's line as now operated, requires a messenger service to reach the party called. Plaintiff's plant is about in average condition for a plant that has been in operation for a period of eleven years without rebuilding, except that, at the time of the hearing, the wires of the company at different points where they crossed over high tension wires of interurban railroads were not protected as the law provides they should be. This resulted from the failure of the roads in constructing their lines to properly construct said crossings.

Plaintiff and defendant have been unable to agree upon terms for a physical connection. The defendant connects

with other companies on a basis of 15 per cent. to the originating company and a division of the other 85 per cent. in proportion to the wires of the companies over which the message passes. And this is the basis on which the Bell company connects with other companies. The independent companies generally connect on a basis of 25 per cent. to the originating company and a *pro rata* distribution of the 75 per cent. according to the mileage of wire.

After hearing and considering the evidence in the case, further proceeding was suspended until the crossing at the point where the wires of the Portage Home Telephone Company cross over or under the high tension wires of interurban roads and electric lighting plants were placed in good condition, and after being informed by the Portage Home Telephone Company that said crossings had all been put in proper condition, an inspection of the same was had by an inspector of this Commission and the report of said Portage Home Telephone Company confirmed. The Portage Home Telephone Company and the Northwestern Indiana Telephone Company were then informed that physical connection between the two companies would be ordered and that they would be given thirty days in which to agree upon terms of connection, and failing to arrive at such agreement, the Commission would then fix the terms. The said thirty days have now more than expired and no agreement has been reached.

It is, therefore, ordered by the Public Service Commission of Indiana, That within thirty days the physical connection between the plants, wires and systems of the Northwestern Indiana Telephone Company and the Portage Home Telephone Company be made at Wheeler, Indiana, by the Northwestern Indiana Telephone Company connecting one of its wires with the switchboard of the Portage Home Telephone Company at Wheeler, without expense to the Portage Home Telephone Company, and said connection is to be maintained and kept in good working order by the said Northwestern Indiana Telephone

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Company at its own expense. The lines, wires and connections of each of said companies shall be constructed, connected, maintained and operated, each company bearing all expense of the construction, connection, maintenance and operation of its own wires, as to give to each company connection with all of the telephones on the plant of the other through the said Wheeler exchange, and connected as above set out.

The respective companies shall jointly construct and maintain, as traffic demands, one or more trunk lines between the Wheeler switchboard of the Northwestern Indiana Telephone Company and the Wheeler switchboard of the Portage Home Telephone Company for the interchange of business between the Wheeler subscribers of the respective companies. They shall also construct and maintain, as traffic demands, one or more trunk lines between Chesterton switchboard of the Northwestern Indiana Telephone Company and the Chesterton switchboard of the Portage Home Telephone Company for the interchange of business between the Chesterton subscribers of the respective companies. The toll charge for messages between the two companies shall be the same as that now in force, except that for messages between the subscribers of the different companies at the Wheeler exchange the charge shall be 5 cents per message to be divided equally between the two companies, and for messages between the subscribers of the two companies at Chesterton the toll shall be 5 cents per message, to be divided equally between the two companies. In all other cases, the toll charge shall be divided on the basis of 25 per cent. to the company originating the message, and the other 75 per cent. of the charge to be divided between the two companies in proportion to the mileage of wire over which the message passes. Settlement is to be made between the two companies as of the first day of each month, and to be made not later than the fifteenth day of the month. Messenger service is to be furnished by the respective company for each other upon request, at the regular established messenger-fee

rates. In the event that the one wire of the Northwestern Indiana Telephone Company connected with the switchboard of the Portage Home Telephone Company at Wheeler should not be of sufficient capacity to successfully and satisfactorily accommodate the business exchanged between the said companies, then the Portage Home Telephone Company shall have the right to construct a second wire from Wheeler to Valparaiso to connect with the exchange of the Northwestern Indiana Telephone Company, and thereafter the division of tolls on the mileage basis between said companies, in so far as the message may pass between Valparaiso and Wheeler, shall be divided equally between the said two points so long as two wires and no more are used. If a question of necessity for the construction of such second wire arises upon which said companies cannot agree, the matter of its necessity shall be submitted to the Public Service Commission of the State of Indiana for determination.

Dated at Indianapolis, Indiana, May 14, 1914.

KANSAS.

Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE FAIRVIEW TELEPHONE COMPANY OF FAIRVIEW, KANSAS, FOR PERMISSION TO INCREASE ITS RATES.

Docket No. 785.

Submitted April 30, 1914 — Decided May 4, 1914.

Insufficient Revenue — Elimination of Discrimination in Favor of Stockholders — Improvement of Service and Quality of Management.

Application for authority to increase rates from 50 cents per month for stockholders and \$1.00 per month for non-stockholders to \$1.25 for all subscribers.

It appeared that the original investment in the property was \$13,500 and that its estimated present valuation was only \$6,500.

Lack of Provision for Maintenance and Depreciation.

The Commission found that the applicant had never provided for depreciation and that the plant had never been properly maintained with the result that extensive repairs and improvements were necessary for which no funds were available.

Insufficient Compensation to Manager — Lack of Regular Accounts.

The Commission further found that the applicant had never paid a sufficient compensation to its managing officer to secure a reasonably competent man and had never kept any regular books.

Improvement in Quality of Management — Provision for Depreciation and Maintenance — Transfer of Utility to More Competent Ownership.

Held: That the telephone is a commercial and social necessity and utilities undertaking telephonic service should be required to provide a high quality of managerial supervision so that the public may be furnished with the most efficient service at the lowest possible cost;

That this result can only be secured by placing the affairs of the utility upon a sound business basis which involves capable management and employees, proper maintenance of plant, correct bookkeeping methods, proper provision for depreciation and other charges, the establishment of equitable rates and the prompt payment of the same by patrons;

That more efficient management is needed by many telephone companies throughout the State, if the public is to be furnished with satisfactory telephonic service;

That a wise management will arrange for proper maintenance and the creation of a proper depreciation fund and that if this is not done, the owners must invest more capital or the public will be compelled to endure the inconvenience incident to inefficient and unsatisfactory service;

That if a utility cannot be operated in a sufficient and efficient manner, business sagacity and the interests of the public would seem to require that it be disposed of to someone more competent to perform the duties imposed upon it.

Excessive Extension of Credit—Prompt Payment of Rentals.

Held: That the applicant is pursuing an improper business policy in carrying accounts receivable of more than \$1,200 and at the same time borrowing money to pay operating expenses, and should file a rule providing for the prompt payment of rentals.

Installation of Regular Books.

Held: That the applicant should install and maintain a set of books, to be kept by a competent person, showing the company's transactions in such manner as will enable it to file the required annual report and show its actual financial condition at any time.

Rental Fixed by Commission.

Held: That a rental of \$1.00 per month will provide sufficient revenue to meet operating expenses and fixed charges and provide a depreciation fund and a reasonable return upon a valuation of \$6,500.

Order.

An order was issued fixing the rate at \$1.00 and requiring the applicant to file a rule providing for the prompt payment of rentals and to keep a regular set of books.*

APPEARANCES:

John Lortscher, president and manager; *F. W. Isely*, director; *Fred Coulson*, counsel, for applicant.

OPINION.

KINKEL, *Commissioner*:

This is an application made by The Fairview Telephone Company, a corporation, of Fairview, Kansas, asking per-

* Editor's headnote.

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mission to increase its rates to \$1.25 per month per telephone, to be charged alike to both stockholders and non-stockholders.

The testimony shows that this company was organized in 1900; that it has an authorized capital stock of \$15,000, of which \$13,500 has been issued. The par value of its stock is \$50.00 per share and at this time it has 270 stockholders, who are also patrons. It rents telephones to 80 patrons not stockholders. According to its present schedule of rates it charges stockholders at the rate of 50 cents per month and non-stockholders at the rate of \$1.00 per telephone per month. The Commission has repeatedly held that this classification is discriminatory and hence not permissible.

The testimony shows that since the commencement of the operation of this company it has never paid its managing officer more than \$50.00 per annum salary. It is the duty of this officer to generally supervise the affairs of the company, employ operators and linemen, and to make all collections. This company's report for the year ending June 30, 1913, shows an item of outstanding accounts, being rentals due from patrons, in the sum of \$1,253.95, and in the profit and loss account is shown a debit balance of \$5,326.15. It is also shown to be necessary for the company to increase its revenue in order to make repairs and improvements imperatively required for the future operation of its plant.

After a careful study of the testimony, it is self-evident that this plant has not been properly maintained and that no action has been taken by the management providing for the matter of its depreciation. As a result, the company now finds itself in an embarrassing situation, in so far that repairs and improvements are demanded and no means are on hand with which to make the same. The company has never paid sufficient compensation to warrant a reasonably competent man to devote the time necessary to the management of a plant of this size; no regular set of books have ever been kept.

The reports that have been made to this Commission have been made up largely from the recollection of the officers, from memoranda picked up here and there, and from an evidently poorly kept cashbook. It is surprising that officers of a telephone company will verify a report, required to be made by law, which is made up from such unreliable and unsatisfactory sources of information. It is not especially surprising that a telephone plant in which was originally invested \$13,500, but which has not been properly maintained, has at this time an estimated value of only \$6,500. It seems, in fact, that a part of the original capital has been used to cover a portion of the items of maintenance and expense. A telephone company should not permit its affairs to reach such a condition as is here portrayed.

There are, seemingly, many companies in like condition throughout the State. This would indicate that more efficient management is necessary in many cases in order to furnish the public with satisfactory telephone service. The telephone is recognized today as both a commercial and a social necessity and the individual, firm, or corporation that undertakes to furnish telephone service should be required to provide a high quality of managerial supervision so that the most efficient service can be rendered at the lowest possible cost to the public. This result can only be obtained by placing the affairs of the utility on a sound business basis, which includes, primarily, capable management and employees, proper maintenance of plant, correct bookkeeping methods, proper provision for depreciation and other proper and fixed charges, the establishment of equitable rental charges, and the prompt payment of the same by the patrons of the company.

A telephone plant that was considered modern ten years ago is today obsolete and no large vision is required to know and believe that the modern plant of today will, in all probability, in ten years from now, be in turn obsolete, due largely to improved methods and equipment. Assuming this proposition to be correct, it is self-evident that a

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wise management will arrange for proper maintenance and the creation of a depreciation fund, so that when it becomes necessary so to do, the plant may be replaced as may be required, thereby fulfilling the object of its creation, namely, the furnishing of sufficient and efficient service to the public. In case no provision is made for these contingencies, it naturally follows that the owners of the plant will be required to put more capital into the treasury in order to equip the plant for the required service, or the public will be compelled to endure the inconvenience incident to inefficient and unsatisfactory service.

If a utility cannot be operated in a sufficient and efficient manner along the lines outlined, business sagacity and public interest would seem to require that it be disposed of to someone more competent to perform the duties imposed upon it.

From the testimony submitted in this case, it is found that by charging a rental of \$1.00 per month per telephone, sufficient revenue would be obtained to pay reasonable operating expenses, fixed charges, create a depreciation fund and allow a reasonable earning on a plant valuation of \$6,500.

It is also found that this company is pursuing an improper business policy in carrying accounts receivable in the sum of more than \$1,200 and at the same time borrowing money to pay operating expenses and attempting to provide for maintenance charges; and in view of these facts the company should be required to file an amended rule providing for the prompt payment of its telephone rentals, said rule to become effective not later than October 1, 1914.

It is also found that the company should at once install and maintain a set of books, to be kept by some competent person, showing the actual transactions of the company, and be thereby enabled to furnish the required annual report and to show the actual financial condition of the company at any time that such information may be required.

And an order will be issued accordingly.

ORDER.

Dated May 9, 1914.

This case being at issue upon the application filed, and having been duly heard and submitted and an investigation of the matters and things involved having been had on April 30, 1914, and the Commission having, on the fourth day of May, 1914, made and filed its report containing its findings of fact and conclusions thereon,

It is, therefore, by the Commission, ordered, That The Fairview Telephone Company, of Fairview, Kansas, be, and it is hereby, authorized to file an amended schedule of rates showing a charge of \$1.00 per month per telephone to be charged indiscriminately to its patrons, both stockholders and non-stockholders.

It is further ordered, That the said The Fairview Telephone Company formulate and file for the approval of this Commission, an amended rule providing for the prompt payment of its telephone rentals, said rule to become effective not later than October 1, 1914.

It is further ordered, That the said The Fairview Telephone Company at once install and maintain a set of books, sufficient to show the actual transactions of the company, and be enabled to furnish in proper form the required annual report and to show the actual financial condition of the company at any time that such information may be required.

It is further ordered, That these requirements be complied with by the said telephone company within thirty days from the date hereof and that the proposed rate be effective on and after thirty days from date and so remain until the further order of this Commission.

WILLIAM FRY *v.* THE BERRYTON TELEPHONE COMPANY.

Docket No. 802.

Dated May 21, 1914.

Elimination of Discrimination in Toll Rates as between Stockholders and Non-Stockholders.

ORDER.

This case being at issue upon complaint and answer filed, and having been duly heard and submitted by the parties, and investigation of the matters and things involved having been had on May 1, 1914, and the Commission having on the twenty-first day of May, 1914, made and filed its report containing its findings of facts and conclusions thereon,

It is now, therefore, ordered, That the respondent herein, the Berryton Telephone Company of Berryton, Kansas, be, and it is hereby, ordered and directed to cease its discrimination in the matter of toll charges, and that it charge for its toll service such rates as are provided for in its schedule of rates now on file in this office, to all patrons alike, whether they be stockholders or non-stockholders.

Dated at Topeka, Kansas, this twenty-first day of May, 1914.

IN THE MATTER OF THE COMPLAINT OF THE NORTHERN KANSAS TELEPHONE AND TELEGRAPH COMPANY OF EFFINGHAM, KANSAS, *v.* THE ATCHISON COUNTY MUTUAL TELEPHONE COMPANY OF MUSCOTAH, KANSAS, HAVING REFERENCE TO TOLL RATES.

Docket No. 768.

Decided May 25, 1914.

Adjustment of Toll Charges — Division of Interline Toll Revenue.

ORDER.

On the sixteenth day of April, 1914, came on to be heard the complaint of The Northern Kansas Telephone and

Telegraph Company of Effingham, Kansas, against The Atchison County Mutual Telephone Company of Muscotah, Kansas, in reference to the adjustment of toll charges between Effingham and Muscotah, Kansas, due legal notice having been given of the hearing, both parties properly represented; and after hearing the complaint and taking the testimony, the matter was taken under advisement.

And now on this twenty-fifth day of May, 1914, having reviewed the records and examined the papers submitted and being duly advised in the premises, the Commission does find that the prayer of the petitioner should be granted.

It is, therefore, ordered, That The Northern Kansas Telephone and Telegraph Company of Effingham, Kansas, and The Atchison County Mutual Telephone Company of Muscotah, Kansas, be, and each is, hereby required to file an amended schedule of rates, providing for toll rate charge of 5 cents for each three-minute message between the towns in question, and 5 cents for each additional three-minute message or fraction thereof, proper accounting between these companies to be made at the end of each month and the total receipts from the toll line in question to be divided equally between the companies.

It is further ordered, That the amended schedules herein provided for be filed within thirty days from the date hereof, the rates in question to be in effect from and after thirty days of the date hereof, and to so remain until further order of the Commission.

Dated at Topeka, Kanas, this twenty-fifth day of May, 1914.

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IN THE MATTER OF THE APPLICATION OF THE ARKANSAS VALLEY TELEPHONE COMPANY FOR PERMISSION TO FURNISH FREE TOLL LINE TELEPHONE SERVICE FOR BUSINESS CONNECTED WITH HARVEST HANDS FOR FARMERS IN THE WESTERN PORTION OF ITS TERRITORY.

Docket No. 852.

Granted June 23, 1914.

Free Telephonic Service for Business Connected with Securing Harvest Hands for Farmers.

ORDER.

Now, on this twenty-third day of June, 1914, comes on to be heard the application of The Arkansas Valley Telephone Company, of Great Bend, Kansas, for permission to furnish free toll line telephone service during this month of June, to certain city officials and commercial clubs located in cities in the western portion of its territory, for the purpose of securing harvest hands for farmers located in said territory; and the Commission, having considered the application and being fully advised in the premises, finds that an emergency therefor exists and that the said application should be granted.

It is, therefore, ordered, That The Arkansas Valley Telephone Company, of Great Bend, Kansas, be, and it is hereby, authorized to furnish free toll line telephone service during this month of June, to certain city officials and commercial clubs located in cities in the western portion of its territory for the purpose of securing harvest hands for farmers located in said territory.

LOUISIANA.

Railroad Commission.

**IN THE MATTER OF THE APPLICATION OF THE CUMBERLAND
TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO
REDUCE ITS CHARGE FOR MESSAGES TRANSMITTED ACROSS
THE MISSISSIPPI RIVER BY SUBMARINE CABLES.**

Authority No. 426—T.

Dated June 18, 1914.

Reduction of Charge for Messages Transmitted by Submarine Cable.

ORDER.

Upon the application of the Cumberland Telephone and Telegraph Company, dated June 16, 1914, authority is hereby granted said company to reduce its charge for conversations transmitted through submarine cables across the Mississippi River, between points in the State of Louisiana, from 10 cents per message to 5 cents per message so transmitted.

Effective July 15, 1914.

MICHIGAN.

Railroad Commission.

**IN THE MATTER OF THE PETITION FOR PHYSICAL CONNECTION
BETWEEN THE LINES OF THE VALLEY HOME TELEPHONE
COMPANY AND THE TELEPHONE FACILITIES OWNED AND
OPERATED BY JOHN BURNS AT KINGSTON, TUSCOLA
COUNTY, MICHIGAN.**

T—43.

Granted June 11, 1914.

Compulsory Physical Connection for Toll Service.

Petition by subscribers of the Kingston telephone exchange for an order requiring physical connection between the lines of the Kingston exchange and those of the Valley Home Telephone Company. Physical connection existed between the Kingston telephone exchange and the "Moore System" which in turn was connected with several other companies. The Valley Home Telephone Company maintained a toll station at Kingston and operated an extensive system of exchanges none of which could be reached by the subscribers of the Kingston exchange except through a toll station.

The Commission found that the desired connection would not affect injuriously the service or financial return of the Kingston telephone exchange, and that it would not result in detriment to the "Moore System" since the normal flow of communication between Kingston subscribers and subscribers of the "Moore System" and its connections would not be decreased thereby. The Commission further found that the connection would unquestionably be in furtherance of the public convenience and necessity and that it could be made at small expense.

An order was made directing the owner of the Kingston telephone exchange to install and complete the connection within thirty days, and providing that if the parties failed to agree as to the division of the cost of installation, or failed to establish joint rates and agree upon the division thereof, these matters would be cared for in a supplemental order.*

APPEARANCES:

John Burns, Kingston Telephone Exchange.

William Moore, Moore Telephone System.

* Editor's headnote.

OPINION.

HEMANS, *Chairman*:

Petitions were received by this Commission, signed by more than sixty persons representing themselves to be subscribers to the telephone service afforded through the telephone exchange operated at Kingston, asking that the Commission issue its order requiring physical connection between the lines of said Kingston exchange and the lines of the Valley Home Telephone Company. An order of hearing was made upon the petitions and hearing regularly had at the village of Bad Axe, Huron County, Michigan, on December 16, 1913, at which time all parties in interest were heard.

Kingston is a hamlet of between three and four hundred people located in Kingston and Koylton townships, in the county of Tuscola, Michigan. In the village and surrounding country a telephone exchange is maintained and operated as an individual enterprise by one John Burns, with which there are connected approximately three hundred subscribers.

The Burns exchange has physical connection with the so-called "Moore System," an individually owned telephone enterprise comprising some seven exchanges, with its principal development at Caro and surrounding country, which in turn has connections with the lines of the Michigan State Telephone Company, the Consolidated Telephone Company and with the Owendale Independent Telephone Company. A toll line of the Valley Home Telephone Company, of Saginaw, extends into the village of Kingston, where that company maintains a toll station. The record discloses that in the towns of Mayville, Vassar, Reese, Otisville, Clio, Akron, Unionville, Sebawaing and Cass City, all of which are either within the county of Tuscola or contiguous thereto, there are extensive telephone developments which have been made by the Valley Home or its connecting companies, and that with such communities the subscribers of the Kingston exchange have no means of communication, except that in some cases they have access to a toll station.

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It is further represented that the Valley Home company has development at Fostoria, Caro, Frankenmuth, Saginaw and Bay City, to the extent of more than 6,500 telephones, and that at least 5,000 cannot be reached by the lines of any other company than those of the Valley Home. So far as the Burns telephone property is concerned, it is not even asserted that the service which it furnishes, or the financial return which it makes to its owner will be in any way injuriously affected by a physical connection with the lines of the Valley Home company at Kingston. The connection of the lines can be readily made at small expense, and the resulting service afforded will unquestionably be in the furtherance of the public convenience and necessity.

We cannot conceive that the connection will result detrimentally to the interest of the "Moore System" through the result of such connection on the toll line by which the Kingston exchange at present has access to its outside connections. The connection will make the subscribers of the Kingston exchange and the subscribers of the Valley Home more accessible the one to the other, but it will in no manner lessen the normal flow of communication between the subscribers of the Kingston exchange and the subscribers of the exchanges and connections of the "Moore System."

The work of installing the physical connection between the Burns exchange at Kingston and the toll line of the Valley Home at that point should in our opinion be performed by the proprietor of the Kingston exchange on or before thirty days from this date. If at the expiration of the time fixed for the installing of such physical connection it shall appear that the parties in interest have failed to agree upon the division of the expense of such connection, and have likewise failed to agree in the establishment of joint rates, tolls and charges, and the division to be made therein, and the traffic rules to be observed in the handling of the joint business, such matters will be determined by the supplemental order of this Commission, for which purpose jurisdiction is hereby retained.

ORDER.

Petition was filed in the above entitled matter by numerous subscribers to the service of the telephone exchange in the village of Kingston, Tuscola County, Michigan, praying the order of this Commission requiring the installation of a physical connection between the facilities of said Kingston exchange and the lines of the Valley Home Telephone Company in the said village of Kingston. Upon the petition, hearing was regularly had.

And this Commission having duly considered said petition and the evidence offered at the hearing thereon, are of the opinion that a physical connection between the lines and facilities of the Kingston exchange and the lines of the Valley Home Telephone Company within the village of Kingston can reasonably be made and that the public convenience and necessity will be subserved thereby.

Therefore, by virtue of the authority vested in us by law,

It is hereby ordered, That John Burns, operating the telephone facility known as the Kingston exchange, and the Valley Home Telephone Company make such physical connection or connections between their toll lines or systems in the village of Kingston as is required for the furnishing of toll line service to and from the subscribers of such Kingston exchange at the stations installed in their residences and places of business over the lines and with the connections of the Valley Home Telephone Company.

And it is further ordered, That the work of installing said physical connection shall be performed by said John Burns, proprietor of the telephone facility known as the Kingston exchange, and be fully completed on or before thirty days from the date hereof, at which time, if it shall appear that the said John Burns and the Valley Home Telephone Company have failed to agree upon the division of the costs of installing said physical connection and have failed to establish and agree upon the division of joint rates, tolls and charges, for the use of such physical connection, the same will be established by the supplemental order of this Commission, for which purpose jurisdiction is hereby reserved.

Dated June 11, 1914.

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IN THE MATTER OF PHYSICAL CONNECTION BETWEEN THE LINES OF THE CONSOLIDATED TELEPHONE COMPANY AND THE VALLEY HOME TELEPHONE COMPANY AT BAD AXE, HURON COUNTY, MICHIGAN.

T—45.

Decided June 11, 1914.

Physical Connection — Lack of Intercommunication between Inter-related Communities — Protection of Interests of Connecting Companies.

Petitions by subscribers of the Consolidated Telephone Company, the Valley Home Telephone Company and certain individually owned lines, asking for physical connection between the lines of the Consolidated company and those of the Valley Home company at Bad Axe for the interchange of messages through the exchange of the Consolidated company at that point.

Bad Axe is the county seat of Huron County. Both the Consolidated company and the Valley Home company maintain exchanges at Bad Axe, the former having 397 subscribers and the latter less than 20. The Consolidated company has physical connection with the Michigan State Telephone Company.

The Commission found that the northern and western portions of the county had only such access to Bad Axe as was afforded by the limited facilities of the Valley Home exchange, and that there existed natural relations between the communities served by the two companies which should be promoted by the provision of the means of intercommunication.

The Valley Home company offered to discontinue its exchange at Bad Axe so that there might be no danger of any loss to the Consolidated company through the opening of its toll connections to a competitor.

The Consolidated company protested that, if it be required to afford connection at all, the point of connection should be Elkton, in order that it might protect its toll investment by receiving the tolls on all messages passing between Elkton and Bad Axe, between which points both companies maintained toll lines.

Held: That through this connection the telephone users of an extensive area, comprising a number of independent companies, will be brought into contact with universal telephonic service; and that the connection must necessarily result in increased traffic and revenue;

That connection at Elkton would have to be established in an exchange not owned or operated by the Consolidated company, which would increase the cost of operation and interfere with the service, while the location of the lines in Bad Axe is such as to render their connection of the simplest character;

That the investment of the Valley Home company in toll lines between Elkton and Bad Axe should be protected as well as the investment of the

Consolidated company in like property; that, under the conditions proposed, there is no prospect of financial loss to the Consolidated company through physical connection at Bad Axe; and that the interests of both companies can be amply protected by the establishment of rules regulating the routing of toll messages and through the establishment of joint rates.

The Commission's order directed the Consolidated company to install physical connection at Bad Axe within thirty days, and provided that if, at the expiration of that time, the companies had failed to agree upon the division of the cost of installation or failed to establish joint rates and agree upon the division thereof, the Commission would make a supplemental order determining these matters.*

APPEARANCES:

- C. D. Thompson*, attorney,
Consolidated Telephone Company;
A. H. McMillan, attorney,
Valley Home Telephone Company;
William Seale, manager,
Bedford Telephone Company;
William J. Moore, manager,
Moore Telephone System;
F. V. Newman, secretary,
Michigan Independent Telephone and Traffic Association.

OPINION.

HEMANS, *Chairman*:

On the fifteenth day of November, 1913, numerous signed petitions were filed with this Commission by the telephone subscribers to the service of the Consolidated Telephone Company, the Valley Home Telephone Company, and to the service furnished by certain individually owned lines operating in the vicinity of Bedford, Pinnebog and Kinde, all in the county of Huron, praying the order

* Editor's headnote.

EDITOR'S NOTE: The Consolidated Telephone Company of Bad Axe has asked the Huron County courts for an injunction restraining the Michigan Railroad Commission from enforcing its order of June 11, 1914, compelling physical connection with the Valley Home Telephone Company.

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of the Commission requiring a physical connection between the lines of the Consolidated company and the Valley Home company to render possible the interchange of messages between the two telephone systems through the exchange facilities of the Consolidated company in the village of Bad Axe. Acting upon these petitions the Commission ordered a formal hearing which was held at the village of Bad Axe on December 16, 1913. At this hearing the facts as outlined in this opinion were developed.

The Valley Home Telephone Company is one of the five largest so-called "independent" telephone companies in the State. The territory served by it, is generally speaking, the Saginaw Valley with numerous patronized exchanges in the cities of Saginaw and Bay City, cities of extensive commercial and industrial importance. The company has numerous exchanges throughout the territory which it serves with toll lines connecting the same and extending to toll stations in contiguous localities. Within the county of Huron the only exclusive exchange of the Valley Home company is at Sebewaing. There are independently operated companies in the county, such as the Pigeon Telephone Company of Pigeon, the Huron County Telephone Company of Elkton, the Owendale Independent Telephone Company of Owendale, and certain individually owned exchanges serving the communities of Bedford, Pinnebog and Kinde, with which the Valley Home Company maintains toll line connections. The lines of the company likewise extend to Bay Port, Port Austin and Grindstone City, where it maintains toll stations, and to the village of Bad Axe, where it has an exchange of less than twenty subscribers.

The Consolidated Telephone Company, which is a so-called connecting company of the Michigan State Telephone Company, has its construction in the county of Huron, and the adjoining county of Sanilac. Its principal development in Huron County is in the village of Bad Axe, where at the time of the hearing it had an exchange of 397 subscribers. It maintains exchanges at Uby and Case-

ville, with which it has toll line connections, as it has likewise with the before mentioned exchanges at Pigeon, Elkton and Owendale. The toll lines of the Michigan State Telephone Company, known generally as the "Bell System," extend into the county of Huron from the cities of Saginaw and Port Huron, with toll connections at Ubly, Bad Axe, Elkton, Pinnebog, Kinde, Port Austin, Point Aux Barques, Port Hope and Harbor Beach. At the last two mentioned places its connections are with independently operated companies that serve those communities. The Michigan State Telephone Company maintains no exchanges within the territory of the Consolidated company and within that territory its toll lines are operated through the agency of the latter company in accordance with certain contract stipulations.

Bad Axe, which as already stated, has access to the lines of the Valley Home company, the Consolidated company and the Michigan State company, is the county seat of Huron County, and a town of growing industrial and commercial importance with urgent demand for the widest means of telephone communication with every portion of the county as well as with adjacent territory. At the time of the hearing, the northern portion of the county in the vicinities of Bedford, Pinnebog and Kinde, with a development of upwards of 400 telephones, and the western portion in the vicinity of Sebewaing, where the Valley Home company has an exchange of approximately 300 subscribers, were denied access to Bad Axe except through the limited facilities which the Valley Home company could offer at that place, while the Bad Axe subscribers of the Consolidated company were likewise restricted, not to mention the further restriction resulting from the lack of the means of intercommunication to the more distant territory served by the respective companies, and between which there are natural relations to be promoted by such means of communication. Since the hearing the Commission has been formally advised that a physical connection has been installed at Kinde between the lines of the Mich-

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igan State Company and the lines of the individually owned systems at that place, and that service is now being accorded the telephone users of that place, Pinnebog and Bedford with Bad Axe and the lines of the Consolidated and Michigan State companies generally, but this connection affords no relief to the subscribers of the Valley company at Sebewaing, nor does it promote that wider communication desirable between the subscribers of the Valley Home and the Consolidated companies, which could be effected by a physical connection between the lines of the companies at Bad Axe, and to effect which the Valley Home company through its representatives at the hearing offered to discontinue its exchange service in Bad Axe, thereby removing from consideration the question of any loss that might result to the Consolidated company from opening its toll connections to a local rival. The Consolidated company protests that if it be required to open its lines to the Valley Home company at all, that the point of connection should be at Elkton and not at Bad Axe to which former point it maintains a toll circuit in duplication of lines maintained by the Valley Home company; that by connecting the lines of the Valley Home at Elkton it would protect its toll line investment by receiving the whole of the toll for all messages passing between the two points. But we are unable to discover where, under the conditions as proposed, there is any prospect of financial loss to the Consolidated company through physical connection with the Valley Home company at Bad Axe. A connection between the lines of the two companies must necessarily result in an increase of traffic and consequent increase in revenue. The investment of the Valley Home company in its lines between Elkton and Bad Axe should be protected as well as the investment of the Consolidated company in its like property. The problem, to our minds, presents no difficulties. Through rules and practices established between the two companies regulating the routing of messages, and through joint rates to be established, the interests of both companies can be amply and

fairly protected. There are at present five circuits maintained by the three companies between Elkton and Bad Axe, one the property of the Consolidated company, two belonging to the Michigan State company, and two to the Valley Home company, the circuits of the two latter companies connecting through to Saginaw and other distant points. It is the opinion of the Commission that the combined circuits are not in excess of the needs of the combined traffic if the same is properly distributed. Moreover, if the connection between the lines of the Consolidated company and the Valley Home was installed at Elkton, it would be in an exchange not owned or operated by the Consolidated company. It would, in our opinion, increase the expense of operation and markedly interfere with the service.

The lines of the Valley Home company and the Consolidated company in the village of Bad Axe are so located as to render their connection for the interchange of messages of the simplest character. We are satisfied that the public convenience and necessity will be subserved by such physical connection for the reasons hereinbefore recited. By this connection the telephone users of an extensive area of the State, comprising a number of independent companies, will be brought into contact with universal telephone service.

The actual work of installing the physical connection should be performed by the Consolidated company and should be fully completed on or before thirty days from this date. By the provisions of the statute the division of the expenses of installing such physical connection, and the establishment and division of the joint rates, tolls and charges for the transmission of messages is for the owners of the facilities in the first instance. If, at the expiration of the time fixed for the installing of such physical connection, it shall appear that the parties in interest have failed to agree upon the division of such expense, and have likewise failed to agree in the establishment of joint rates, tolls and charges, and the division to be made therein, and

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the traffic rules to be observed in the handling of the joint business, such matters will be determined by the supplemental order of this Commission, for which purpose jurisdiction is hereby retained.

ORDER.

Petitions were filed in the above entitled matter by numerous subscribers to the service of the Consolidated Telephone Company and the Valley Home Telephone Company in the village of Bad Axe and other places in the county of Huron, State of Michigan, praying the order of this Commission requiring the installation of physical connection between the facilities of said Consolidated Telephone Company and the lines of the Valley Home Telephone Company in the said village of Bad Axe. Upon such petition hearing was regularly had.

And this Commission, having duly considered said petitions and the evidence offered at the hearing thereon, are of the opinion that a physical connection between the lines and facilities of the Consolidated Telephone Company and the lines of the Valley Home Telephone Company within the village of Bad Axe can reasonably be made; that by such connection the lines of said companies will form a continuous line of communication, and that public convenience and necessity will be subserved thereby.

Therefore, by virtue of the authority vested in us by law,

It is hereby ordered, That the Consolidated Telephone Company and the Valley Home Telephone Company make such a physical connection or connections between their toll lines or systems in the village of Bad Axe, Huron County, Michigan, as is required for the furnishing of toll line service between the subscribers of said Consolidated Telephone Company and the Valley Home Telephone Company from the stations installed in the residences and business places of the subscribers to the service of said companies, respectively, in their various exchanges.

And it is further ordered, That the work of installing such physical connection be performed by the Consolidated Telephone Company and be fully completed on or before thirty days from the date hereof, at which time if it shall appear that the Consolidated Telephone Company and the Valley Home Telephone Company have failed to agree upon the division of the costs of installing said physical connection, and have failed to establish and agree on the division of joint rates, tolls and charges for the use of such physical connection, the same will be established by the supplemental order of this Commission, for which purpose jurisdiction is hereby reserved.

Dated June 11, 1914.

JOHN J. TWEDDLE, PARM C. GILBERT *v.* MICHIGAN STATE
TELEPHONE COMPANY AND CITIZENS' TELEPHONE COM-
PANY.

T—51.

Decided June 11, 1914.

Compulsory Physical Connection of Competing Exchanges for Interchange of Toll Service.

The complainants in this case sought an order requiring the physical connection of the lines of the defendants at Traverse City for the interchange of messages between the subscribers of their competing exchanges at that point.

Inconvenience to Public Occasioned by Lack of Connection.

Traverse City is a center having more or less intimate official, commercial and social relations with the surrounding communities. There are a number of these communities, in which the Michigan State Telephone Company operates the sole exchange, with which the subscribers of the Citizens' company at Traverse City can converse only by installing a Michigan State telephone or by going to a toll station of the Michigan State Telephone Company. There are other communities, in which only the Citizens' Telephone Company operates, which can be reached by the Traverse City subscribers of the Michigan State Telephone Company only by the installation of a Citizens' telephone or by going to a toll station of the Citizens' Telephone Company. There is also a group of communities with which interchange of communication can be had through the exchange of either company at Traverse City.

Owing to its extensive long distance connections, the Michigan State Telephone Company handles a greater number of messages per year than the Citizens' Telephone Company despite the fact that the Citizens' company has about four times as many local subscribers.

Held: That this disproportion in the number of messages handled indicates that the extent of the inconvenience and financial loss resulting to the public from the lack of intercommunication is of a very material character.

Conditions Precedent to Order Compelling Connection.

Held: That by the express terms of the statute two conditions must be found to exist as conditions precedent to an order compelling physical connection: (1) That such connection can reasonably be made between telephone systems whose lines by such connection can be made to form a continuous line of communication; (2) That such connection will subserve public convenience and necessity;

That the first of these conditions involves the necessity of finding that the connection sought is practicable from an engineering standpoint, that when made it will facilitate the service required, that its cost will not exceed the benefits to be derived by those making use of it and that there is a reasonable prospect of financial return to those burdened with its maintenance and operation;

That the engineering problem presented in the physical connection of the lines of the defendant companies is of the simplest character and that the connection can be effected at little more than a nominal expense, will not impair the service of either company, and will serve as a means of connecting the subscribers of each company with the subscribers and toll lines of the other;

That these facts justify a finding that the connection can be reasonably made and that by such connection the lines involved can be made to form a continuous line of communication.

Public Convenience and Necessity.

Held: That the second of these conditions involves the consideration of three questions: (1) Is there a well reasoned public demand for the thing sought? (2) Will its establishment seriously interfere with or jeopardize private rights? (3) Will better service to the public result therefrom?

That considered from these viewpoints, the enforcement of the connection is justified on the ground of public convenience and necessity, which can never be the subject of exact classification or definition because it is determined by the particular facts of each case and requires the exercise of the discretion of the Commission in caring for "public exigencies."

Prevention of Duplication of Facilities.

Held: That this conclusion is supported by the statute, which was intended to prevent duplication of facilities and at the same time afford the widest possible use of telephonic facilities through the physical connection of separately owned companies, and would fail to serve its purpose if it became the means of protecting the property rights of competing telephone companies by denying to the public the widest possible use of the facilities protected. A utility is protected against competition because one utility can be made to serve the purpose of two, and in such a case physical connection between the lines of the separate companies is absolutely essential to efficient regulation.

Constitutional Objections to Compulsory Physical Connection.

With respect to the constitutional questions involved in compelling physical connection,

Held: That the Commission is bound by the spirit of the law under which it acts and by the express provisions of the fundamental law of the land to protect all private property employed in the public service, and that no degree of public convenience and necessity and no demonstration of the simplicity of establishing connection can justify the confiscation of property directly or indirectly;

That there is nothing in the statute which justifies the defendants' assumption that each exchange will be required to furnish service to its competitor's subscribers on the same terms under which it furnishes service to its own subscribers, thus giving the use of its facilities without compensation or for an inadequate compensation, upon which assumption the defendant bases its theory that its property is to be directly confiscated and its use indirectly taken without just compensation.

**Justifiable Discrimination between Subscribers of Competing Exchanges —
Additional Charge for Connection with Competing Exchange.**

Held: That a telephone subscriber is not entitled to the service of two or more exchanges at the reasonable rate exacted for the service of one and the subscriber of one company desiring service through the exchange of the other must pay an additional rate commensurate with the service received, this constituting a just and necessary discrimination between the subscribers of the competing exchanges;

That the additional costs which are occasioned by the connection must be included in the additional charge, which is not to be absorbed by either company but divided between them.

Limitation of Use of Connection to Interchange of Toll Messages.

Held: That for the present the use of the connection will be limited to the furnishing of the toll service of each company to the subscribers of the

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other, the Commission reserving jurisdiction for the purpose of requiring additional service if warranted by the exigencies of the situation.

Division of Cost of Installation — Establishment and Division of Joint Rates.

The Commission ordered the Michigan State Telephone Company to install physical connection within thirty days and provided that, if at the end of that time the companies had failed to agree upon the division of the cost of installation or had failed to establish, and agree upon the division of, joint rates, the Commission would issue a supplemental order establishing the same.*

APPEARANCES:

John J. Tweddle, Parm C. Gilbert, for complainants.

Thomas G. Long, attorney, for Michigan State Telephone Company.

Charles E. Tarte, general manager, for Citizens' Telephone Company.

OPINION.

HEMANS, Commissioner:

In the city of Traverse City there are competing telephone exchanges, the one operated by the Michigan State Telephone Company, generally denominated the "Bell System," and the other by the Citizens' company, a company operating in the city of Grand Rapids and several other cities of western Michigan.

The proceedings in the above entitled matter were instituted to obtain the order of the Commission requiring these telephone companies to provide physical connection between the respective exchanges in Traverse City to facilitate the interchange of telephone messages between the subscribers of the two systems connected with the respective exchanges.

To the petition filed herein the defendant Michigan State Telephone Company entered formal answer, controverting the jurisdiction of the Commission to make any order in

* Editor's headnote.

EDITOR'S NOTE: The Michigan State Telephone Company has asked for an injunction restraining the Commission from enforcing its order of June 11 1914, ordering physical connection at Traverse City between the lines of the Michigan State Telephone Company and the Citizens' Telephone Company.

the premises, and its authority to require a physical connection between the lines and facilities of the defendant companies. The Citizens' Telephone Company filed no formal answer, but through its representative at the hearing expressed itself as willing to abide such order and determination as might be made herein.

The facts material to an understanding of the issue, sustained by the record, are as follows: The Michigan State Telephone Company is the dominant telephone system of the State. It has exchanges in all of the more populous centers of the State, and toll lines radiating to every section, with connection with the lines of the American Telephone and Telegraph Company through which it facilitates the transmission of interstate messages.

The Citizens' Telephone Company of Grand Rapids is the larger of the so-called independent companies of the State; its greatest strength, from the standpoint of patronage, being in Grand Rapids and certain cities of western Michigan, in few, if any, of which is it the exclusive telephone facility.

The city of Traverse City, according to the census of 1910, has a population in excess of 12,000. It is the leading city, commercially and industrially, of an extensive section. As of the first day of January, 1914, the Citizens' Telephone Company had connected with its Traverse City exchange 1,740 sub-stations or subscribers, while at the same time there were 479 connected with the Michigan State exchange.

At the time of the hearing there were 188 duplications, or cases where subscribers had telephones of both exchanges.

Contiguous to the city of Traverse City are numerous cities and villages whose citizens are in more or less intimate official, commercial and industrial relation with the citizens of Traverse City. Traverse City has certain wholesale and jobbing concerns patronized by merchants of surrounding communities. It is the principal city in the Thirteenth Judicial Circuit, which includes the counties of Antrim, Charlevoix, Grand Traverse and Leelanau. It is the

site of the Traverse City State Hospital for the insane, which receives its patients from the thirty-seven counties of the northern portion of the Power Peninsula.

Many of the communities that are in close social, official and commercial relation with the city of Traverse City have no other telephone facilities except such as are furnished by the Michigan State Telephone Company. Among such are Charlevoix, Central Lake, Ellsworth, East Jordan and Manistee. Elk Rapids should likewise be included in this list for its telephone development is wholly that of the Michigan State Telephone Company, except that a toll station is maintained in the city by the Citizens' Telephone Company. As between the citizens of these communities and the citizens of Traverse City, telephone communication is possible only over the lines and by means of the facilities of the Michigan State Telephone Company. There are a number of other communities where the Citizens' Telephone Company, as at Traverse City, has considerable telephone development in competition with the Michigan State company; among such being the towns of Buckley, Empire, Kingsley, Leland, Maple City, Northport, Old Mission, Oviatt, Fort Oneida and Suttons Bay. As between the subscribers to the service of the Citizens' company at these points, direct connection and communication can be had with the city of Traverse City only through the exchange of the Citizens' Telephone Company. There are a number of other cities and villages in the general territory of Traverse City, such as Petoskey, Boyne City, Boyne Falls, Kal-kaska, Mancelona, Alden and Bellaire, where the telephone facilities are owned by the Michigan State Telephone Company. These communities were formerly served, at least in part, by the Swaverly Telephone Company, which was purchased and became merged with the Michigan State Telephone Company. By the order of this Commission, giving sanction to such merger, the former connections of the Swaverly company, which included the Citizens' Telephone Company, were preserved and extended to the combined properties, so that the subscribers of the exchanges

of the Michigan State Telephone Company at the places last mentioned have direct means of communication with any subscriber of either exchange in Traverse City, and are accorded the service by simply indicating at the time of the call, the particular exchange with which the person called has connection in Traverse City. Likewise the subscriber of both exchanges in Traverse City have the means of communication with all the subscribers in the particular exchanges last mentioned, which are embraced in the territory formerly served by the Swaverly Telephone Company.

Summarized, the telephone situation at Traverse City is as follows:

Within the city the Citizens' Telephone Company has an exchange of 1,740 subscribers as against approximately one-fourth that number connected with the exchange of the Michigan State Telephone Company. There are a number of important commercially related communities with which the subscribers of the Citizens' company in Traverse City can communicate only by duplicating the facility which they have, or making a trip to, and a wait at, the toll station of the Michigan State company. There is a second group of communities in which the citizens of Traverse City have social and business interests, but with which the subscribers to the service of the Michigan State company can have no communication, except by installing a duplicate instrument of the Citizens' company, or by seeking such toll facilities as are to be had by the inconvenience of a visit to the exchange of that company. There is a third group of communities with which interchange of communication may be had through the exchange of either company.

As bearing upon the extent of public inconvenience resulting from this situation, it is of interest to note that the record discloses that for the year preceding the thirty-first of December, 1913, the Citizens' company, for the Traverse City exchange, shows 23,491 outgoing messages, which returned revenue to the company of \$5,416.38, or an average of approximately 23 cents a message. The toll receipts from incoming messages was shown to be \$6,756.80.

Applying the same average message return would show 29,377 incoming messages or a total of outgoing and incoming messages of 52,868.

For the same period the Traverse City exchange of the Michigan State Telephone Company discloses 22,268 outgoing messages. The incoming messages were estimated from a four days' peg count and were computed to be 44,100, or a total of outgoing and incoming messages of 66,368. There is no way of accurately computing for this period the number of times the subscribers of one exchange were required to go in person to use the toll facilities of the exchange with which they have not connection, in the making or answering of calls, because, for the incoming calls the Michigan State company uses the exchange service of the Citizens' Telephone Company to call the subscribers of that exchange to answer toll messages so there are no messenger records for such calls. But when we recall the extensive toll connections of the Michigan State Telephone Company, and observe that with a local exchange of 479 subscribers it handles in one year 66,368 incoming and outgoing messages, as against 52,868 messages of like character which, during the same period, were handled by the Citizens' Telephone Company with its local exchange of 1,740 subscribers, we are impressed that the extent of the inconvenience and financial loss resulting to the public from the particular situation is of a very material character.

The particular statute under which the order of this Commission is sought, requiring the physical connection of the lines of the two telephone companies, is Section 6 of Act 206, Public Acts of 1913, and is as follows:

"SEC. 6. Whenever the Commission, after a hearing had on its own motion or upon complaint of any party in interest, shall find that a physical connection can reasonably be made between the lines of two or more persons, copartnerships or corporations operating telephone lines, whose lines by such connection can be made to form a continuous line of communication, and that public convenience and necessity will be subserved thereby, or shall upon like motion or complaint find that two or more persons, copartnerships or corporations so operating telephone lines have failed to establish joint rates, tolls or charges for service by or over their

said lines, the Commission may by its order require that such physical connection be made, and may prescribe through lines and joint rates, tolls and charges to be made and to be used and observed in the future. If such persons, copartnerships or corporations so operating telephone lines and telephone facilities do not agree upon the division between them of the cost of installing of such physical connection or connections, or the division of any joint rate, tolls or charges established by the Commission over such through line, the Commission shall have authority, after hearing, to establish such division."

It appears that the statute by its express terms names two conditions that must be found to exist as conditions precedent to the ordering of a physical connection between the lines of separate companies:

First, that such connection can reasonably be made between the lines of two or more persons, copartnerships or corporations, whose lines by such connection can be made to form a continuous line of communication.

We assume that from this requirement the Commission is bound in a given cause to find that from an engineering standpoint the connection sought is practicable; to find that when the connection is made it will facilitate the service required, and that it can be made at an expense not in excess of the benefits to be derived by those who use it, and that there is reasonable prospect of financial return to those burdened with its maintenance and operation.

The exchange buildings of both the Michigan State and Citizens' companies in Traverse City are located on Front Street, the one on the corner of Union Street and the other near the corner of Cass Street, but little more than a city block apart. The cables of the Citizens' company are in conduits in an alley-way in the rear of both exchanges, while the cables of the Michigan State company are carried upon poles in the same alley-way. The engineering problem presented in a physical connection between the lines of the two companies in the city of Traverse City is of the simplest and could be effected at little more than a nominal expense. It is not seriously contended that such a connection would impair the service of either com-

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pany if made, and it is likewise conceded that if made it would serve as a means of connection from the subscribers of one exchange to the subscribers and over the toll lines of the other exchange. The record, therefore, justifies the finding that in the instant case a physical connection can reasonably be made, and that the lines by such connection can be made to form a continuous line of communication.

Secondly, by the statute quoted, it is made the duty of this Commission to find that such a connection when made will subserve public convenience and necessity. The term "public convenience and necessity" is one frequently found in statutes requiring official action of a discretionary character, promoting what may be termed "public exigencies." These can never be the subject of exact classification or definition because they are always questions of facts that are deduced from a variety of considerations. The phrase "public convenience and necessity" is used in two other sections of the act of which the section in question forms a part. In Section 8, the sale or lease of telephone facilities, and in Section 9, the securing of a franchise for the construction of telephone facilities, is made to depend upon a finding by the Commission that public convenience and necessity is to be thereby served.

In considering the question of public convenience and necessity, we assume that the Commission's inquiry should be: Is there a well reasoned public demand for the thing sought? Will its construction seriously interfere with or jeopardize private rights? When constructed, will the public be thereby better served?

Considering the question from each viewpoint suggested, we are persuaded that the connection is justified on the grounds of public convenience and necessity, and in this connection, aside from the record bearing upon the subject, an examination of the telephone statute as a whole reveals a further consideration which, we think, supports this position. It is the evident purpose of the statute to, as far as possible, substitute regulation for competition.

As already indicated, by the terms of the law, a company may no longer construct lines upon the highways without this Commission having first found that such telephone construction is justified by public convenience and necessity. All telephone utilities now promptly seek the intervention of this Commission when there is prospect of duplication of their lines in a given territory. The plain intent of the law was to eliminate the economic waste incident to the duplication of facilities and at the same time give the widest possible use of telephone facilities through the physical connection of separately owned companies. The statute would come very far from serving its purpose if it became the means of protecting the property rights of competing telephone companies by denying the public the widest use possible of the facility protected. The facility is protected against competition because one utility can be made to serve the purpose of two or more. Physical connection between the lines of separate telephone companies is absolutely essential to efficient regulation.

There is a third consideration not specifically set forth in the statute as a thing that must be found as a prerequisite to the ordering of a physical connection, but a matter that the Commission is none the less bound to consider as a part of the general law of the land. It is the contention of defendant, the Michigan State Telephone Company, that to require it to install physical connection between its lines and the lines of its competitor, the defendant Citizens' Telephone Company, and to require it to turn over its facilities and long distance circuits to the subscribers of that company, will be a taking of the property of the Michigan State Telephone Company without paying just compensation therefor, and therefore in contravention to the guaranties of the State and Federal Constitutions. It is likewise further urged by it that if it be required by the order of this Commission to open its toll lines and give access to its long distance connections to the exchange of the Citizens' company, which at Traverse City has much the larger number of subscribers, the inevitable

and necessary result will be that all subscribers who now have connection with the local exchange of the Michigan State company because of its long distance connections, will put out their Michigan State telephones and use only the instruments of the Citizens' company, and in this manner it is claimed an order for physical connection in the instant case would result in a confiscation of the property of the Michigan State Telephone Company. No degree of public convenience and necessity supporting the physical connection of competing telephone properties, and no demonstration of the simplicity of such connection can ever stand as a justification for confiscation directly or indirectly, and although the particular statute under which the order of this Commission is sought is silent upon the subject, this Commission is bound by the spirit of the law under which it acts and express provisions of the fundamental law of the land to protect all private property employed in public service, but the theory of the Michigan State Telephone Company that its property is to be directly confiscated and that in its use it is to be indirectly taken without just compensation, proceeds from the assumption that in case of physical connection between the two exchanges each exchange is to be required to furnish service to the subscribers of its competitor upon the same terms, for the same charges and the same tolls that it furnishes like service to its own subscribers; that it is to give the use of its facilities and perform service without compensation or at least for an inadequate compensation; but there is nothing in the statute to justify this assumption. The patron of an exchange which transmits his message over a physical connection and on to the lines of the connecting company must pay a rate commensurate with the service he receives. This rate may be higher than the rate named by either company to its own subscribers. For, in the service over the line of the two companies there are accounting costs, costs of operation and costs of maintenance not to be dealt with in the case of a patron talking over the line of the company to which he is

a subscriber. Under the law, the company with which a message that traverses the lines of more than one company originates, becomes the guarantor to the connecting company of all tolls and charges. This is a consideration that likewise involves additional expense. Because of these and other considerations, the subscriber of one company desiring service over the line of another company must pay a rate which reasonably compensates for the additional service. A telephone subscriber is not entitled to the service of two or more exchanges at the reasonable rate exacted for the service of one exchange.

The additional charge which the companies are warranted in making must, under the statute, be in the form of a joint rate, not to be absorbed by either company, but to be divided between them. "This," to use the language of the Wisconsin Commission in *Winter v. LaCrosse Telephone Company et al.*,* "will not result in any discrimination between subscribers of the same exchange, but will result in a just and necessary discrimination between the subscribers of the different exchanges."

For the present, the Commission limits the operation of its decision requiring physical connection, to the use of such connection for toll line service to the subscribers of each company connected with the Traverse City exchanges, reserving jurisdiction for the purpose of requiring such additional and further service as the exigencies of the situation may warrant.

The work of installing the physical connection between the lines of the two companies at Traverse City shall be performed by the Michigan State Telephone Company and be fully completed on or before thirty days from this date, at which time, if it shall appear that the Michigan State Telephone Company and the Citizens' Telephone Company have failed to agree upon the division of the costs of installing said physical connection and have failed to establish and agree upon the division of joint rates, tolls

* Printed in Commission Leaflet No. 18, at page 952.—Ed.

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and charges for the use of such physical connection, the same will be established by the supplemental order of this Commission, for which purpose jurisdiction is hereby reserved.

ORDER.

Petition was filed herein on the eighth day of February A. D. 1914, praying for an order of the Commission requiring a physical connection between the telephone exchanges of the respective defendant companies in the city of Traverse City, to which said petition answer was filed by the Michigan State Telephone Company and hearing had in the regular order.

And this Commission having read the pleadings filed herein, and considered the evidence and arguments of counsel, are of the opinion that a physical connection between the lines of said companies within the city of Traverse City can reasonably be made, and that when made the lines of said companies will form a continuous line of communication, and that the public convenience and necessity will be subserved thereby.

Therefore, by virtue of the authority vested in us by law,

It is hereby ordered, That the Michigan State Telephone Company and the Citizens' Telephone Company make such a physical connection or connections between their toll lines or systems in the city of Traverse City as is required for the furnishing of toll line service to the subscribers of each company at the stations installed in their residences and places of business over the toll lines of the other company.

It is further ordered, That the work of installing such physical connection shall be performed by the Michigan State Telephone Company and be fully equipped and completed on or before thirty days from the date hereof, at which time, if it shall appear that the Michigan State Telephone Company and Citizens' Telephone Company have failed to agree upon the division of the costs of installing

said physical connection, and have failed to establish and agree upon the division of joint rates, tolls and charges for the use of such physical connection, the same will be established by the supplemental order of this Commission, for which purpose jurisdiction is hereby reserved; this Commission likewise reserving jurisdiction to require by said physical connection such further and additional service as the conditions may from time to time demand.

Dated June 11, 1914.

MISSISSIPPI.

Railroad Commission.

In re APPLICATION OF JOHN L. SMITH FOR PERMISSION TO PROCURE FROM THE RAILROADS AND TELEPHONE AND TELEGRAPH COMPANIES FREE SERVICE OR SERVICE AT REDUCED RATES IN FURTHERANCE OF THE WORK TO SECURE FUNDS FOR THE MISSISSIPPI EXPOSITION COMMISSION.

Granted June 25, 1914.

Free or Reduced Rate Service in Aid of Securing Funds for State Exhibit at San Francisco Exposition.

ORDER.

Application of John L. Smith, manager of the Mississippi Exposition Commission for permission of the Mississippi Railroad Commission to procure free transportation or transportation at reduced rates from all railroads in Mississippi, and it appearing that the Commission is authorized in granting such aid to secure free transportation for John L. Smith, A. R. Barracks, F. H. Heinrichs for the said service of all railroads in Mississippi and to secure the service of the telephone and telegraph companies doing business in the State of Mississippi in furtherance of the work of soliciting funds for the Mississippi Exposition Commission, and the same being heard and it appearing to the Commission that the Legislature at its recent session created a commission to solicit funds for the purpose of having Mississippi represented at an exposition to be held at San Francisco, California, and provided on said account, and it appearing that under the provisions of Section 4844 of the Annotated Code of 1906, the Commission has authority to permit such grants in proper cases and deeming it a proper case in this instance,

It is, therefore, ordered by the Commission, That the said several railroads doing business in Mississippi may grant

free transportation or transportation at less than the regular rates to the said John L. Smith, A. R. Barracks and F. H. Heinrichs, representatives of the Mississippi Exposition Commission, which may be used when engaged in the business of soliciting funds from the several counties, municipalities and from persons in the State of Mississippi, but said transportation must not be granted or used for any other purpose.

It is further ordered, That the telephone and telegraph companies doing business in Mississippi may grant free service on telephone or telegraph to the said John L. Smith, A. R. Barracks and F. H. Heinrichs, when the same pertains to the soliciting of funds or making engagements, but said service to be used only for said purpose of soliciting funds for the Mississippi Exposition Commission.

Ordered this the twenty-fifth day of June, 1914.

MISSOURI.

Public Service Commission.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF RATES, RENTALS, CHARGES, REGULATIONS AND PRACTICES OF THE HUME TELEPHONE COMPANY.

Case No. 270.

Decided May 25, 1914.

Suspension of Proposed Schedule of Rates—Valuation of Property— Revenue and Expenses under Existing and Proposed Schedules.

Upon informal complaint by the city council of Hume, the Commission suspended the schedule of proposed rates filed by the Hume Telephone Company, pending an investigation into the reasonableness of said rates.

The Commission assumed, for the purposes of this investigation, that the present value of the investment in the use of, and useful to, the public was \$4,000 and considered that, except for an item for use of an automobile, the operating expenses reported, amounting to \$1,942, were reasonable. It appeared that the gross revenue was \$1,878. Accordingly, an annual deficit of \$64.00 existed without making any allowance for depreciation, interest on the investment, or loss from uncollectible accounts.

The Commission found that the revenue under the proposed rates (omitting as improper an item of reduced rates to subscribers within the initial rate area furnishing and maintaining equipment) would be \$2,424, leaving a balance of \$482 which was not more than was needed to provide for depreciation, interest on the investment, loss on uncollectible accounts and payments to subscribers within the initial rate area owning equipment.

Discrimination—Reduced Rates to Subscribers within the Initial Rate Area Furnishing and Maintaining Equipment—Payment of Rental to Subscribers Owning Equipment.

The Commission disapproved a reduced rate proposed for subscribers situated within the initial rate area who furnish and maintain boxes.

Held: That it is not a proper practice for subscribers situated within the initial rate area to furnish or maintain any portion of the equipment; that the proposed reduced rate would constitute a discrimination against subscribers for whom the company furnishes and maintains the entire equipment;

That subscribers situated within the initial rate area who have invested in equipment should pay the standard rates and the company should

pay to each such subscriber annually an amount equal to 11 per cent. on the subscriber's investment, 6 per cent. for interest and 5 per cent. for depreciation;

That the proposed schedule should be permanently restrained, but, if the company files, before June 1, 1914, a schedule corrected as indicated, it may be allowed to go into effect.*

OPINION.

WIGHTMAN, *Commissioner*:

The Hume Telephone Company, not incorporated, but engaged in the "business of affording telephonic communication for hire," at Hume, Bates County, Missouri, under a franchise from that town, filed with the Commission its schedule of rates, P. S. C., Mo., No. 1, showing, in effect April 15, 1913, the following rates for flat rate exchange service for town subscribers:

Business, special line.....	\$1 00 per month	\$12 00 per year
Residence, special line	1 00 per month	12 00 per year
Residence, two-party line.....	1 00 per month	12 00 per year
Rural party lines, subscribers furnishing and maintaining equipment beyond initial rate area, per subscriber station		3 00 per year

On December 26, 1913, this company filed its P. S. C., Mo., No. 2, to become effective February 1, 1914, with the following schedule showing certain increases in rates and additions in classes of service offered to subscribers:

Business, special lines.....	\$1 50 per month	\$18 00 per year
Business, party lines.....	1 25 per month	15 00 per year
Business, extension sets.....	75 per month	9 00 per year
Residence, special lines.....	1 00 per month	12 00 per year
Residence, two-party lines.....	1 00 per month	12 00 per year
Residence, subscribers furnishing box	75 per month	9 00 per year
Residence, extension sets	50 per month	6 00 per year
Additional charge for desk set equipment at business stations	25 per month	3 00 per year
Residence stations	25 per month	3 00 per year
Rural party lines, subscribers furnishing and maintaining equipment beyond initial rate area, per subscriber station		3 00 per year

* Editor's headnote.

Informal complaint was made to the Commission by the city council, through the mayor of Hume, under date of January 24, 1914, protesting against the rates in the proposed schedule becoming effective, in which claim was made of the rates not being just and reasonable to the telephone users of the town. The Commission, therefore, on January 30, 1914, issued an order suspending the operation of said schedule, P. S. C., Mo., No. 2, until June 1, 1914, pending an investigation of the rates, under and by virtue of the authority of Section 94 of the Public Service Commission Law, which provides, among other things, that:

"Whenever there shall be filed with the Commission by any telegraph corporation or telephone corporation any schedule stating a new individual or joint rate, rental or charge, or any new individual or joint regulation or practice affecting any rate, rental or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested telegraph or telephone corporation or corporations, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, rental, charge, regulation or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the telegraph or telephone corporation affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, rental, charge, regulation or practice."

Upon due notice to all interested parties a hearing of the matter was held before Commissioner Wightman at Hume, Missouri, on March 26, 1914, and evidence was taken and the cause submitted by the telephone company and by the city of Hume, through their respective attorneys. The evidence in this case shows one item of operating expense as, "Use of automobile, \$120 per year." It is the opinion of the Commission that this amount is excessive for the livery expense of such an exchange and that \$60.00 per year would be a reasonable allowance for that item. From the evidence submitted and without going into a detailed appraisal of the plant, it appears just and sufficiently accurate for the purposes of this case to assume the present value

of the investment in the use of and useful to the public at \$4,000. The other items submitted in the testimony for operating expenses, shown in the following, may be considered reasonable:

OPERATING EXPENSES.

	<i>Per year</i>
Salary for manager, linemen and collector, \$60.00 per month..	\$720
Operators' salaries	660
Rent, light and heat.....	62
Livery hire	60
Directory and other printing and stationery, postage, batteries and other maintenance and repair, materials and extra labor..	400
Taxes	40
TOTAL	\$1,942

The telephone company's proposed schedule shows one rate to "subscribers furnishing box, 75 cents per month, \$9.00 per year." The Commission cannot permit this item to become effective, as it is not a proper practice for the subscribers to furnish or maintain part of the equipment on this class of stations; and for the further reason that the reduction in rates as proposed in this instance would amount to a discrimination against other subscribers on the exchange, for whom the company furnishes and maintains the entire equipment.

Where it appears that by reason of arrangements now in existence subscribers within the initial rate area have invested in such parts of the equipment, the Commission would approve of these subscribers paying only the standard rates published and filed for the class of service received, and of the telephone company paying to such subscribers an amount equal to 6 per cent. annual interest on the subscribers' investments and 5 per cent. annual depreciation on the subscribers' investments in said equipment.

The present revenue of the company, as shown by the evidence, is as follows:

PRESENT REVENUE.

20 business stations, at \$12 per year.....	\$240
50 residence stations, at \$12 per year.....	600
22 business stations, at \$6 per year.....	132
27 residence stations, at \$6 per year.....	162
200 rural subscribers, at \$3 per year.....	600
From long distance tolls.....	144
<hr/>	
TOTAL	\$1,878

This shows an annual deficit of \$64.00 without taking into consideration interest on the telephone company's investment, the necessary allowance for depreciation, or the loss claimed from uncollectible accounts.

By applying the proposed schedule of rates (omitting the improper item of reduced rate to subscribers furnishing and maintaining parts of the equipment within the initial rate area of the exchange) the revenue of the telephone company would be:

Rural stations, 200, at \$3 per year.....	\$600
Business stations, 42, at \$18 per year.....	756
Residence stations, 77, at \$12 per year.....	924
Long distance tolls.....	144
<hr/>	
TOTAL REVENUE	\$2,424
Deduction of above operating expense of.....	1,942
<hr/>	
Leaves the balance of.....	\$482

In view of the fact that this revenue will change from time to time on account of patrons taking classes of service different from the present record, additional subscribers being secured, etc., this balance of \$482 is not more than the telephone company will need at present as a reasonable provision for interest on its assumed value of \$4,000, depreciation to be set aside for replacement of property, the average loss on uncollectible accounts of \$12.00 per year, and a payment to subscribers owning the 49 sets of station equipment in the town equal to 6 per cent. interest on their investments and 5 per cent. depreciation on their invest-

ments in such equipment. The accounting reports to be established by the Commission will show in future the exact status of the telephone company's business and enable the Commission to rearrange the rates when necessary.

It is, therefore, the opinion of the Commission that the schedule of rates, P. S. C., Mo., No. 2 of the Hume Telephone Company should be permanently restrained, but if said telephone company will file before June 1, 1914, a rate schedule corrected as above indicated, it may be allowed to go into effect.

All concur.

ORDER.

The testimony in the above entitled case having been duly heard and submitted at a hearing before Commissioner Wightman at Hume, Missouri, on the twenty-sixth day of March, 1914; and a full investigation of the matters and things involved herein having been had; and the Commission having on the date hereof made and filed a report containing its findings of facts and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is now ordered, 1. That the schedule of rates of the Hume Telephone Company filed with this Commission on the twenty-sixth day of December, 1913, and entitled as its P. S. C., Mo., No. 2, be, and the same is hereby, permanently restrained and set aside, as in the above mentioned report recommended and required.

Ordered, 2. That this order shall take effect on this date. Dated at Jefferson City, Missouri, May 25, 1914.

HUME TELEPHONE COMPANY *v.* E. L. LIGGETT.

Case No. 277.

Decided May 25, 1914.

Certificate of Public Convenience and Necessity — Installation and Operation of Telephone Line without Authority.

Complaint that the defendant was operating a telephone system at Hume without having obtained a certificate of public convenience and necessity from the Commission.

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It appeared that the defendant, representing certain former subscribers of the complainant, whose connection had been severed owing to a disagreement as to rates, had constructed and was operating a telephone line under a permit from the board of aldermen but without securing a certificate of public convenience and necessity from the Commission. It further appeared that the charges for service rendered were collected from the public.

Held: That since this line is "used in the conduct of the business of affording telephonic communication for hire," it is a "telephone corporation" as defined in Article I, Section 2, Paragraph 17, of the Public Service Commission Law, and is subject to the jurisdiction of the Commission;

That the line was installed without lawful authority.

Ordered, That defendant discontinue service until he shall have obtained from the Commission a certificate of public convenience and necessity.*

OPINION.

WIGHTMAN, Commissioner:

This is a proceeding instituted on complaint of the Hume Telephone Company against E. L. Liggett, charging that defendant is operating a telephone business in the town of Hume, Bates County, Missouri, without proper authority from the Commission, and in violation of Article V, Section 96, of the Public Service Commission Law, which provides, among other things, that:

"No * * * telephone corporation hereafter formed shall begin construction of its * * * telephone line without first having obtained the permission and approval of the Commission and its certificate of public convenience and necessity, after a hearing had upon such notice as the Commission may prescribe. Before any such certificate shall be issued there must be filed in the office of the Commission by the applicant therefor, a verified statement showing that the required consent of the proper municipal authorities has been obtained."

The defendant answered the complaint, asking the Commission's full investigation of the matter. A hearing of the case was ordered to be held at Hume on the twenty-sixth day of March, 1914, before Commissioner Wightman, and was so held. Both parties were represented by counsel at the hearing and full testimony was taken.

* Editor's headnote.

It appears from the evidence submitted that the defendant was acting as the representative of about fourteen farmers residing several miles from the town of Hume, who had for some time prior to 1911 received telephone service at their respective residences from the Hume Telephone exchange; that about two years ago this connection was severed owing to a disagreement between the subscribers and the management of the said telephone exchange as to rate of charges for service. It is further shown by the evidence that on the twenty-second day of January, 1914, the board of aldermen of Hume gave to Mr. E. L. Liggett, defendant, the privilege of constructing and operating a telephone line on the streets of said town, and that, shortly thereafter, the defendant did erect certain poles and did string wires and did install a telephone in the hotel office in Hume, Missouri, and that all was done without securing or seeking a certificate of public convenience and necessity from the Public Service Commission, as prescribed by Article V, Section 96, of the Public Service Commission Law. The defendant in this case testified that these acts were not intended as a violation of the law, but were committed in the belief that the Public Service Commission had no jurisdiction over a corporation furnishing that class of service.

The evidence shows that the arrangement made for the operation of this telephone line in question was such that service over this line to, through and over toll lines connected therewith at Foster, Missouri, where this line terminated in the switchboard of an exchange, should be charged and collected for from the public, and that this line established in Hume by the defendant was a "line used in the conduct of the business of affording telephonic communication for hire." Therefore, its management comes under the jurisdiction of the Commission, according to the definition of a telephone corporation in the Public Service Commission Law, Article I, Section 2, Paragraph 17:

"The term 'telephone corporation,' when used in this act, includes every corporation, company, association, joint stock company or associa-

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tion, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire."

It is the opinion of the Commission that the said telephone line established in Hume, Missouri, by the defendant, E. L. Liggett, is installed without proper lawful authority. It is also the opinion of the Commission that the defendant should be ordered to discontinue the service he has established over the telephone line in question until he shall first fully comply with all the requirements of said Section 96 of the Public Service Commission Law.

All concur.

ORDER.

The above entitled cause being at issue upon complaint and answer on file, the testimony therein having been duly heard and submitted by the parties thereto, a full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

And it appearing to the Commission, as in said report set forth, that the defendant, E. L. Liggett, has been and is operating at and in the city of Hume, Missouri, a telephone line and telephone instrument without first having obtained from this Commission a certificate of public convenience and necessity, as required by Section 96 of the Public Service Commission Law;

Now, after due consideration,

It is ordered, 1. That said E. L. Liggett, defendant herein, be, and he is hereby, directed and required to immediately cease and desist from further violating the provisions of said Section 96 by operating said telephone line and telephone instrument now operated by him in said city of Hume, Missouri, as herein above set forth, until he shall first fully comply with the provisions of said Section 96 by obtaining from this Commission, on proper application, a

certificate of public convenience and necessity, authorizing him to operate such telephone line and telephone instrument in said city of Hume.

Ordered, 2. That this order shall take effect on the first day of June, 1914, and continue in effect until otherwise ordered by the Commission, and that the secretary of the Commission shall forthwith serve on the defendant, E. L. Liggett, a certified copy of this order, and that within ten days after such service said E. L. Liggett shall notify the Commission whether the terms of this order are accepted and will be obeyed.

Dated at Jefferson City, Missouri, May 25, 1914.

IN THE MATTER OF THE CLOSING OF THE GRANDVIEW EXCHANGE OF THE MISSOURI AND KANSAS TELEPHONE COMPANY.

Case No. 407.

Granted June 11, 1914.

Discontinuance of Exchange.

ORDER.

The Missouri and Kansas Telephone Company, having presented to the Commission its duly verified application for authority to discontinue operation of its telephone exchange at Grandview, Missouri, on the ground that it has now no subscribers to said exchange; and it appearing to the Commission that said The Missouri and Kansas Telephone Company is providing telephone service to the former subscribers of its said Grandview exchange through its exchanges at Kansas City and other points, and that the city council of the city of Grandview has, through its chairman, consented to the discontinuance of said exchange as proposed by the applicant herein;

Now, upon said application, and after due consideration,

It is ordered, 1. That The Missouri and Kansas Telephone Company be, and it is hereby, authorized and per-

mitted to discontinue its telephone exchange at Grandview, Missouri, for the reasons above set forth.

Ordered, 2. That this order shall take effect on this date.

Dated at Jefferson City, Missouri, this eleventh day of June, 1914.

IN THE MATTER OF THE APPLICATION OF THE QUEEN CITY
MUTUAL TELEPHONE COMPANY FOR PERMISSION TO PUR-
CHASE OF THE SOUTHWESTERN TELEGRAPH AND TELE-
PHONE COMPANY A CERTAIN FRANCHISE AND PROPERTY
IN QUEEN CITY, MISSOURI.

Case No. 16.

Decided June 21, 1913.

**Transfer and Sale of Franchise and Property — Contract for Free
Connection.**

It appearing that two telephone exchanges in the same city are not giving good service on account of insufficient equipment and maintenance; that each has to pay its individual operating expense, whereas with one exchange the operating expenses would probably not exceed that of either company materially, and that service to the public would be promoted; permission is given applicant to purchase a certain franchise and property of the competitive company, approving at the same time, a contract for free exchange of connection.*

REPORT OF THE COMMISSION.

SHAW, Commissioner:

This is an application for authority to transfer the franchise and property of the Queen City exchange of The Southwestern Telegraph and Telephone Company to the Queen City Telephone Company for the sum of \$150, and for the approval of the contract for free exchange of connection between the Queen City Telephone exchange and the exchanges of the Southwestern Telegraph and Telephone Company at Glenwood and Lancaster.

Queen City, Missouri, has a population of approximately eight hundred, and in this city each of the petitioners is operating a small telephone exchange. The Southwestern

* Syllabus prepared by the Commission.

Telegraph and Telephone Company has installed eighty-seven 'phones within the city limits, and is operating under a twenty-year franchise, granted November 14, 1904, to Samuel Perrin, his heirs, administrators and assigns, and charging and collecting for a telephone in a private residence \$1.00 per month and for "places other than private residences" \$1.25 per month, as authorized under this franchise. It also furnishes twelve "switched telephones" at \$6.00 per annum and fifty "switched telephones" at \$2.00 per annum. This franchise further provides for the payment to the city of Queen City of 2 per cent. of the gross receipts.

The Queen City Telephone Company is a voluntary association, having 295 subscribers and is operating an exchange in Queen City, charging and collecting for telephone service at the following rates: For business houses, \$9.00 per annum; for residences, \$4.80 per annum; for "switched subscribers," \$2.00 per annum. It is operating under a franchise granted September 4, 1905, which franchise is subject to the franchise of November 14, 1904, theretofore granted to Samuel Perrin, with substantially the same provisions as to maximum telephone charges and the payment to the city of 2 per cent. of the gross receipts.

Neither of these telephone exchanges is giving good service on account of lack of sufficient equipment and proper maintenance, and each receives as income only a part of the total amount paid for telephone use in Queen City, and each has to pay its individual operating expenses; whereas, with one exchange, as proposed, the operating expenses would probably not exceed that of either present company materially. The interest of the public in this transfer is to secure reliable and satisfactory service, as the rates do not appear unreasonable, and in order to improve the service the Queen City Mutual Telephone Company agrees to make betterments by the expenditure of \$500 to be obtained from its subscribers by assessment. The traffic agreement is to be entered into in order to secure toll service for the telephone users of Queen City through the

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exchange of the Queen City Mutual Telephone Company over the toll lines of The Southwestern Telegraph and Telephone Company, and also in order to secure free exchange of service between the exchanges in Queen City, Glenwood and Lancaster.

The Commission is of the opinion that this sale and transfer is in the interest of the public, as well as to the interest of the telephone companies, and should, with the betterments proposed, lead to the giving of more satisfactory service. So no objection appearing, the authority prayed for is granted.

ATKINSON, KENNISH and WIGHTMAN, *Commissioners*, concur.

ORDER.

The Queen City Mutual Telephone Company having filed with this Commission its application under Section 98 of the Public Service Commission Law for authority to purchase the franchise and property of the exchange of The Southwestern Telegraph and Telephone Company, located in Queen City, Missouri, and a public hearing on said application, after due notice, having been held by Commissioner Shaw of this Commission in the city of Queen City, Missouri, on May 26, 1913:

Now, upon the aforesaid application and accompanying papers and evidence at the hearing and after due deliberation,

It is ordered, That the consent of this Commission be and is hereby given that the Queen City Mutual Telephone Company purchase the franchise and property set forth and described in the application of said company, dated the twelfth day of May, 1913, from The Southwestern Telegraph and Telephone Company for and in consideration of the sum of \$150; that the traffic agreement by and between said companies, and in particular as to the fourth clause, is approved.

THE ENTERPRISE TELEPHONE COMPANY v. THE SOUTHWEST-
ERN TELEGRAPH AND TELEPHONE COMPANY.

Case No. 268.

Dismissed June 29, 1914.

**Physical Connection Denied — Existing Facilities Sufficient — Application
for Physical Connection at Boonville.**

Held: That inasmuch as the complainant already has long distance connection with the Boonville Telephone Company's exchange and with the defendant's toll lines at Boonville, through physical connection with The Missouri and Kansas Telephone Company's exchange at Pilot Grove, the latter company being connected with the Boonville Telephone Company; and inasmuch as all but one of the complainant's subscribers at Boonville are also subscribers of the Boonville Telephone Company which is physically connected with The Southwestern Telegraph and Telephone Company, public convenience and necessity will not be subserved by the physical connection prayed for.

Complaint dismissed.*

FINDINGS, CONCLUSION AND ORDER.

This cause being at issue upon complaint and answer filed, and the evidence having been duly heard and reported to the full Commission and full investigation of the things and matters involved having been had and the cause argued before the Commission at its office in Jefferson City, and the Commission upon the date hereof having made its findings of fact and conclusions thereon, which are hereby made a part hereof, as follows, to wit:

FINDINGS.

1. By order of the Commission, dated August 6, 1913, in Case No. 72, *In the Matter of the Application of the Enterprise Telephone Company for Permission to Exercise a Franchise and Permit Granted by the City of Boonville*,† the Commission granted a certificate of convenience and necessity to the applicant herein in order to provide telephonic communication between the citizens of Boonville

* Editor's headnote.

† Printed in Commission Leaflet No. 24, at page 411.—Ed.

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and other citizens of Cooper County outside of Boonville, which public necessity was not otherwise satisfied.

2. Complainant already has long distance connection, through its Pilot Grove exchange, which appears the logical center of the applicant's system, with The Missouri and Kansas Telephone Company, and through physical connection of The Missouri and Kansas Telephone Company with the Boonville Telephone Company's exchange and the long distance or toll lines of the defendant, The Southwestern Telegraph and Telephone Company in Boonville. Service through this connection to points north of Boonville and the Missouri River appears to be unsatisfactory, though the cause for this and the remedy were not apparent.

3. The Commission finds, as a matter of fact, that public necessity and convenience will not be subserved by the physical connection of complainant with defendant in Boonville, as prayed for, particularly as all except one of applicant's subscribers in Boonville are subscribers to the Boonville Telephone Company, and consequently already have long distance or toll connection through that company and its existing connections with defendant's lines.

ORDER.

And the Commission being now fully advised on and concerning the premises,

It is ordered, 1. That the complaint in the above entitled cause be, and the same hereby is, dismissed without prejudice.

Ordered, 2. That this order shall take effect on the tenth day of July, 1914, and that the secretary of the Commission forthwith serve on the parties hereto certified copies of this order and the report filed herein.

NEBRASKA.

State Railway Commission.

IN THE MATTER OF THE INFORMAL COMPLAINT OF THE SODTOWN TELEPHONE COMPANY AS TO AN ALLEGED EXCESSIVE CHARGE BY THE FARMERS' HOME TELEPHONE COMPANY FOR MESSAGES PASSING BETWEEN THE LINES OF THE COMPLAINANT AND THE EXCHANGE OF THE DEFENDANT AT SHELTON.

Informal Complaint No. 3251.

Dated May 15, 1914.

Approval of Rate for Interchange of Messages — Division of Revenue.

INFORMAL RULING.*

Referring again to your Informal Complaint No. 3251, filed with this Commission April 27, 1914, and running against Farmers' Home Telephone Company on account of alleged excessive charge on messages passing between patrons of your company and the exchange of defendant company at Shelton:

Under date of May 15, 1914, the Commission took action upon the matter, as shown by the following excerpt from the minutes, the arrangement being agreeable to the Farmers' Home Telephone Company of Shelton:

"The Sodtoun Telephone Company of Saint Michael, Nebraska, and the Farmers' Home Telephone Company of Shelton having signified their willingness to interchange messages between the two exchanges on a basis of 5 cents per call, revenue to be divided equally between the two companies, and it appearing to the Commission, upon due investigation and consideration, that the arrangement is equitable and warranted by existing conditions, the adjustment as above outlined was authorized

* Informal ruling contained in a letter of the Commission, dated May 16, 1914, addressed to H. C. Umiller, Secretary, Sodtoun Telephone Company, Saint Michael, Nebraska, and issued over the signature of the Secretary of the Commission.— Ed.

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by affirmative vote of the Commission, effective June 1, 1914, and it was directed that the two exchanges affected be notified by letter of the action taken. (See Informal Complaint No. 3251)."

You will note that the new rate becomes effective June 1, 1914. Our understanding is that, under the application of the new rate, your company will receive 2½ cents and the Shelton company 2½ cents on all messages passing between your lines and the exchange of the Shelton company.

VALLEY INDEPENDENT 'PHONE LINE v. CRAWFORD TELEPHONE
COMPANY.

Formal Complaint No. 224.

Dismissed May 16, 1914.

Discrimination in Switching Service.

Complaint of discrimination against complainant and other farm lines connected with the Crawford exchange in that farm lines connected with the Whitney exchange were afforded switching service to both the Crawford and Whitney exchanges for the same charge that was collected from those connected with the Crawford exchange for service to the Crawford exchange only.

It appeared that the apparent discrimination was in some measure justified by the better service afforded the farm lines connected with the Crawford exchange.

The defendant offered to give the complainant switching service to the Whitney exchange if the complainant would extend its line so as to connect with that exchange, but the complainant did not wish to do this.

Held: That inasmuch as the service demanded, if given to the complainant, must be extended to all farm lines connected with the Crawford exchange, and as the slight demand for the service between Crawford and Whitney indicated by the amount of tolls collected (\$2.45 in 1913) would not justify the construction of an additional trunk line which would be necessary to give the service demanded, the complaint should be dismissed.*

APPEARANCES:

For complainant, *J. G. Hennold*.

For respondents, *G. T. Babcock*, attorney, and *E. D. Warner*, general manager.

* Editor's headnote.

An informal hearing was held at the village hall at Whitney by Commissioner Hall on the seventh day of May, 1914.

FINDING AND ORDER.

HALL, *Commissioner*:

The complainant herein complains of the defendant, the Crawford Telephone Company, for that the said defendant performs switching service to the complainant and all other farm lines running into its exchange, at a rate of \$5.00 per year, while at the same time the said defendant furnishes switching service to the subscribers and farm lines of the Whitney exchange for the same price, the result being that the subscribers of the Whitney exchange and all farm lines running into the Whitney exchange get the Whitney exchange service and the Crawford exchange service for the same rate that the complainant pays for the Crawford exchange alone.

Crawford is located on the Chicago, Burlington and Quincy and Chicago and North-Western roads, on the western edge of Dawes County. Whitney is seven miles north-east on the North-Western line. The complainant is a farm line running directly east from Crawford seven miles, where it branches out to the north and south, and continues east two more miles, and again branches to the north and south, and thence east another mile, and branch farm lines run out to the east, to the southeast and to the northeast, upon which there are about twenty-two 'phones. There is a farmers' line, known as the Ash Creek line, which connects with the Whitney exchange and runs south about six and one-half miles, thence east about two miles, thence south a mile, then branching out in a southeasterly direction, occupying territory adjacent to and just north of the territory that is occupied by the complainant herein.

The defendant owns and operates a line which extends north of Crawford one mile, thence east seven miles to a point known as the Brodhurst farm, where it joins with the Ash Creek line, which runs almost straight north to Whitney. This line of the defendant and that portion of

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the Ash Creek line which runs north to the Whitney exchange is used as a trunking line between Whitney and Crawford by the Whitney exchange and Crawford exchange, over which all messages are sent by the subscribers of the Whitney exchange and the subscribers of the Ash Creek line, and for this joint service the defendant gives the subscribers of the Ash Creek line switching service to Whitney and to Crawford at \$5.00 per year, the Ash Creek line, of course, maintaining its half of the trunking line between Whitney and Crawford, and the Crawford exchange maintaining its half, which extends from Crawford to the Brodhurst farm. The Whitney exchange with all the farm lines connected therewith has less than fifty 'phones, for which the subscribers of the Whitney exchange pay \$2.00 for business, \$1.50 for residence, and \$1.50 for farm, but for these prices they are given the Whitney exchange and are switched to the subscribers of the Crawford exchange, which has something over 500 subscribers.

The real basis of this complaint is that the subscribers of the Ash Creek line and the farm lines that run into Whitney get not only the Whitney exchange but the Crawford exchange for \$5.00, while the complainant gets only the Crawford exchange. It was brought out clearly at the hearing, however, that the complainant herein has a direct connection with the Crawford exchange, uninterrupted by any other subscribers except its own in getting the connections with the Crawford exchange. For the subscribers of the complainant to reach Whitney it is necessary for them to call the Crawford exchange and pay a toll charge of 15 cents. This is true of all the farm lines that run into Crawford. Whenever any subscriber of any of the farm lines of the Crawford exchange wishes to call Whitney a toll charge of 15 cents is made. Now, if the switching services performed for the complainant were to include the Whitney exchange, it would also be necessary to give all the farm lines that run into Crawford the Whitney exchange for the same switching charge. When a subscriber of the Ash Creek line, or of any one of the farm lines that run into Whitney, wishes to call Crawford, they have to

take their turn on the trunking line with all of the subscribers of their own lines, and with the subscribers of all other lines connected with the Whitney exchange, thereby deferring the service to a great extent as compared with the service that the Valley line has with the Crawford exchange.

It is apparent that there may be a phase of discrimination in the fact that the farm lines of the Whitney exchange and the Ash Creek lines get both the Whitney exchange and the Crawford exchange at \$5.00 per year, while the Valley line gets only the Crawford exchange for the same price. Yet when the question of service is considered, and the fact that if the Valley line were given service to the Whitney exchange, the same service would have to be given to all the farm lines that run into Crawford, it does not seem that the element of discrimination complained of should be considered.

The complainant herein admits that in order for it to be given switching service with the Whitney exchange it would be necessary to build an extra trunking line between Crawford and Whitney, owing to the fact that the present joint trunking line is not of sufficient capacity to carry the necessary extra wires; that the wires that are now being used on the trunking line are already overloaded; and that the condition of the pole line is such that it would not bear the extra burden of more wires.

It was further brought out at the hearing that the toll revenue for the year 1913 paid to the Crawford exchange for connections with the Whitney exchange amounted to but \$2.45. This would indicate that the service demanded is very light and would not justify the building of an additional trunking line between the two exchanges.

It was further brought out that the Whitney exchange, as a matter of fact, is a part of the Chadron company, although the Chadron company is owned by the same parties that own the Crawford exchange.

The defendant herein expressed its willingness to give the plaintiff herein additional switching service with the

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Whitney exchange if the plaintiff would extend its line from a point about seven miles east of Crawford up to Whitney and connect with the Whitney switchboard. This the plaintiff does not wish to do.

There is no substantial difference as to the facts brought out at the hearing. Considering the amount of toll revenue that is being collected for toll service from the plaintiff for toll calls to Whitney, and the fact that a new trunking line would have to be built a distance of about fifteen miles in order to give the service demanded by the plaintiff, and the fact that if service were given to the plaintiff as demanded it would make it necessary to give the same service to all farm lines running into Crawford, the Commission is of the opinion that the complaint herein should be dismissed.

It is, therefore, ordered, That the complaint be, and the same is hereby, dismissed.

Made and entered at Lincoln, Nebraska, this sixteenth day of May, 1914.

IN THE MATTER OF THE APPLICATION OF THE MONROE INDEPENDENT TELEPHONE COMPANY FOR AUTHORITY TO PUBLISH AN ADDITIONAL RATE OF 25 CENTS PER MONTH FOR DESK SET TELEPHONES.

Application No. 2110.

Granted May 19, 1914.

Approval of Additional Rate for Desk Telephones.

ORDER.

WHEREAS, the Monroe Independent Telephone Company of Monroe has made application to the Nebraska State Railway Commission for authority to publish an additional rate of 25 cents per month for desk set telephones, as compared with the rate for wall 'phones, said additional rate to apply to the exchanges of the applicant at Newman Grove, Genoa, Monroe, Lindsay, Platte Center, Albion and Tarnov;

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions;

It is ordered, by the Nebraska State Railway Commission, That the desired authority be, and the same is hereby granted, the rate as above authorized to become effective from and after June 1, 1914.

Made and entered at Lincoln, Nebraska, this nineteenth day of May, 1914.

IN THE MATTER OF THE APPLICATION OF THE WASHINGTON AND WESTERN TELEPHONE COMPANY FOR THE COMMISSION TO VALIDATE \$1,275 OF COMMON STOCK, WHICH HAD BEEN PREVIOUSLY ISSUED BY SAID COMPANY WITHOUT THE AUTHORITY OF THE COMMISSION, AND TO ISSUE \$5,500 OF ADDITIONAL COMMON STOCK.

Application No. 1934.

Decided May 22, 1914.

Issuance of Stock.

Application for validation of stock issued without authority and for authority to issue additional stock to the amount of \$5,500.

Validation of Stock Issued Without Authority—Relation of Stock to Value of Property.

Held: That the stock issued without authority represents money paid in and expended in construction and the amount of stock legally outstanding, if this stock be validated, will fairly represent the present value of the property.

Issuance of Additional Stock—Extension of Lines to New Subscribers.

Held: That the issuance of additional stock to the amount of \$500 should be permitted for the purpose of extending the applicant's lines to new subscribers desiring service.

Capitalization of Replacements—Reconstruction to be Provided for Out of Rates or by Assessment Upon Stockholders.

Held: That additional stock should not be issued for reconstruction purposes since this would amount to the capitalization of replacements contrary to law;

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That money for reconstruction should be secured either by increasing the rates, if insufficient to provide for operation, maintenance and reconstruction; or by assessment upon the stockholders, who should not receive free service and at the same time fail to provide for reconstruction of the plant;

That the company should levy assessments upon its stockholders for rebuilding its lines in order that it may be able to render efficient service both to its stockholders and to those paying regular rents.

Purchase of Equipment Owned by Subscribers — Capitalization of Equipment Purchased.

Held: That the company should take over all equipment owned by subscribers because as the service increases it will be impossible to furnish efficient service if part of the equipment is owned and maintained by subscribers; and that the value of equipment taken over should be capitalized.

Elimination of Discrimination Between Stockholders and Non-stockholders — Provision for Dividends.

Held: That rentals should be charged to all users without discrimination, sufficient to provide for operating expenses, current maintenance and depreciation and to create a surplus sufficient to pay reasonable dividends.

Operating and Income Accounts.

Held: That the company should keep accurate accounts of its operating income, showing expenditures for general operating expenses, current maintenance and depreciation and the amounts paid out as dividends.

Order.

The stock issued without authority was validated and the applicant was authorized to issue additional stock to the amount of \$500.*

FINDING AND ORDER.

HALL, Commissioner:

This is an application made to the Commission pursuant to Section 758, Revised Statutes of 1913, "*An act regulating the issuance of stocks, bonds and other forms of indebtedness of common carriers and public service corporations and providing penalty for the violation thereof.*" In force July 1, 1909.

* Editor's headnote.

The application herein was filed with the Commission on January 30, 1914. Said application contains detailed statement of all materials and property owned by the applicant and devoted to telephone service, and shows the reproduction value of the same to be \$5,245.88. The applicant has previously outstanding \$2,500 in common stock, and \$1,275 common stock which has been issued without the authority of the Commission, making a total of \$3,775.

On March 10, 1914, an informal hearing was held in the matter at Verdigre, Nebraska, and all books and records now in possession of the company were submitted to U. G. Powell, accountant and statistician for the Commission, by Mr. V. A. Pavelka, secretary and manager of the company. From an examination of the books and information furnished by Mr. Pavelka, we find that the company was organized June 29, 1907. On June 30, 1913, it had 177 subscriber stations in service, divided into 19 city and 158 farm. It was impossible to ascertain the book cost value of the company, for the reason that the books of the company, prior to sometime in 1909, were burned. The books that are now in the possession of the secretary are not kept in such a manner that it would be possible to tell what the property cost that has been added to the plant since the present books were established.

From the books and information furnished by the secretary and manager, we find that there are five classes of telephone users in said company divided as follows:

(1) Sixty-one stockholders who paid in \$25.00 into the original organization of the company and received a share of stock, face value \$25.00. In addition to the \$25.00 they were expected to furnish their own sub-station apparatus and one day's hauling of poles and two days' labor to the building of the main lead lines that were built at that time.

(2) Sixty-nine stockholders who became interested in the company by the payment of \$35.00 in cash, for which they received one share of stock, face value \$25.00, and were expected to furnish apparatus for the sub-station, to haul the poles necessary for the construction of the drop wires from the main line to the stockholder's residence, it being understood by this class of stockholders that the company would set one mile necessary for the drop, the new stockholders to set the necessary poles to reach the farm house beyond the mile limit, the company to

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furnish one mile of wire and to furnish the labor necessary to string all of the wire from the main line to the residence.

(3) Twenty-one stockholders who paid in cash \$45.00 for which they received one share of stock, face value \$25.00. They were to furnish and install apparatus at the sub-station and haul the poles necessary for reconstructing the drop from the main line to their residence beyond a limit of one mile, the company to furnish the material necessary to build the drop.

(4) Nine renters, so-called, furnished their lines complete from the main line lead to the residence, including the sub-station apparatus and installment. For the privilege of connecting to the main line of the company these nine subscribers pay an annual switching rental of \$6.00.

(5) The company has fourteen renters who do not own any part of the line or apparatus necessary to furnish them telephone service. Twelve of these so-called renters live in the city and two in the country. They pay an annual rental charge of \$15.00 for the service.

From the above it will be readily noted that an attempt was made by the original organizers of the company to equalize the stockholders coming into the company after the original organization was put into operation by charging them amounts above the \$25.00 for stock issued. It is to be noted, however, that the bulk of the stockholders coming into the company after the original company was organized was mostly on the basis of \$35.00, which was later raised for the balance of the new members, that afterwards came in, to \$45.00. No annual rental charge was made against the stockholders, but small assessments were levied when money was actually needed to pay for the operation of the plant. According to the best recollection of Mr. Pavelka, three assessments were levied against the original stockholders of \$1.00 each; the result of this being that there was no money raised except that actually necessary to pay bare operating expenses, and for a number of years the stockholders received practically free telephone service, at the expense of their plant, which was subject to regular depreciation.

The first annual report that the Washington and Western Telephone Company of Verdigre made to the Commission was for the fiscal year ending June 30, 1912. This report shows that the earnings from operation for the fiscal year was as follows:

Earnings:

Toll	\$33 25
Rental	328 75
Miscellaneous	25 70

TOTAL	\$387 70
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Expenses:

Maintenance	\$252 44
Operation	300 00
General	15 01

TOTAL	\$567 45
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NET DEFICIT	\$179 75
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Number of subscribers' stations, this date:

City	15
Farm	145

TOTAL	160
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The annual report for the fiscal year ending June 30, 1913, shows the following earnings and expenses:

Earnings:

Toll	\$60 40
Subscribers' rentals	1,080 20
Miscellaneous	58 00

TOTAL	\$1,198 60
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Expenses:

Maintenance	\$353 85
Operation	461 40
General	3 75

TOTAL	\$819 00
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NET SURPLUS	\$379 60
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Number of subscribers' stations in service:

City	19
Farm	158

TOTAL	177
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From the above figures it appears that the stockholders did not pay any rental charge for the fiscal year 1912, and as I understand it, no rental charges were made to the stockholders for any period previous to that time. If the number of actual renters of service and the farm lines switched were practically the same in 1912 as they are at the present time, the earnings from these two sources would amount to approximately \$300, while the amount of earnings in 1912 from rentals was \$328.75.

We were informed by Mr. Pavelka that the board of directors had recently authorized increased salaries as follows:

Central operator	\$90 00 per annum additional
Manager	90 00 per annum additional
Board of directors.....	32 00 per annum additional
<hr/>	
TOTAL	\$212 00

The estimated annual earnings on the basis of the present subscribers' stations in service, based on information supplied by Mr. Pavelka, is

14 renters, at \$1.50.....	\$210 00
14 drop owners, at \$6.00.....	84 00
142 stockholders, at \$6.00.....	852 00
<hr/>	
TOTAL	\$1,146 00
Estimated toll earnings.....	60 00
Estimated miscellaneous earnings.....	60 00
<hr/>	
TOTAL	\$1,266 00

The question for the Commission to determine in this case is the amount of stock that it should authorize to be issued. The petitioners asked to be allowed an issue of additional capital stock in the amount of \$5,500, and to have validated \$1,275 which has been previously issued by the company without the authority of the Commission. This makes a total outstanding capitalization at the present time of \$3,375, which amount was verified by our investigation of the books of record and from the information furnished

by the secretary and manager, from which we found that there were at the present time 151 stockholders who have received shares of stock, of the par value of \$25.00, making a total sum of \$3,375.

From the above figures it will be readily seen that no stock has been issued for the money paid into the treasury of the company by those stockholders who became members after the original 61, who constituted the entire membership at the time the company was organized.

As mentioned before, 69 stockholders paid in \$35.00 and received one share of stock at the par value of \$25.00, making a sum in excess of the stock issue \$690; 21 stockholders paid in \$45.00 and received one share of stock, par value \$25.00, making an amount of \$420 paid into the company in excess of stock issue. This makes a total of \$1,110 paid into the treasury of the company by stockholders who became members after the original plant was put in operation. Over and above this, there was a certain amount of labor for which no stock was issued, but, according to the statement of the secretary and manager, the money was used not only for the construction of new plant but was used for maintenance of the old plant.

As evidenced by the statement of earnings shown in the annual report for the fiscal year 1912, it would be fair to assume that some of the free labor was furnished the company by the stockholders for telephone service, and might be properly considered as a payment of telephone rental rather than for the construction of new plant. It is to be noted that the direct operating expenses for the year 1912, not including maintenance, was \$315.01, an amount very little in excess of the money received from the renters who pay \$15.00 per annum to the company, and those renters who pay a switching charge of \$6.00 per year.

Attention is called to the material difference in the two classes of stock, for which the applicant makes application. Referring to the last page of applicant's statement, subdivisions (a) and (b), which describe the purposes for which they ask to issue \$7,475 of stock; subdivision (a) asks for the validation of \$1,275 worth of stock already

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issued; subdivision (b) asks to have issued \$6,200 of stock for the purpose of selling same to additional subscribers and shareholders and for the further improvement of the present system.

At the hearing the secretary and manager said that the plant had to be reconstructed and that it was necessary to raise funds for that purpose, and that he could sell stock to his present stockholders and raise money in that way for said reconstruction easier than he could raise it from rents charged for the 'phones to his stockholders. The result of this would be to capitalize replacements, which would be contrary to the spirit and intent of the law. The \$1,275 of stock issued without authority of the Commission represents the amount paid into the treasury of the company at \$25.00 par value, plus the additional amount that the directors demand, which we have heretofore explained was an attempt at an equalization between stockholders, and the same has already been placed into the plant, so that in validating this amount the holders of the same would receive the stock for which they have already paid money at par value into the company.

Assuming that the secretary and manager was correct in his statement when he said that a considerable amount of reconstruction must be made in the near future, the question arises where is the money to come from with which to make the necessary repairs, and it becomes all important. The money received from new shareholders, who desire service from the company, will not be available for the purpose of reconstruction. It will be put into extensions and betterments. It will, therefore, be necessary for the present holders of stock to pay into the treasury of the company for any stock that might be issued to them, but the proceeds of the same should not be used for reconstruction purposes but would have to be used for extensions to the plant. The money for reconstruction purposes should be raised in one of two ways: First, if the rates are not sufficient to raise funds sufficient to pay operation and maintenance and for reconstruction of the plant, they should be raised; or, if it is not desirable to raise the rates to the

stockholders of the company, then assessments should be made upon the stockholders to raise funds sufficient to reconstruct the plant. The stockholders of the company should not receive free telephone service and at the same time not take care of the reconstruction of the plant, and if the plant is allowed to deteriorate they should then be called upon to raise the money to rebuild the plant.

The Commission is of the opinion that should the \$1,275 of stock be validated, the amount of stock then legally outstanding will fairly represent the present value of the company's properties, and as there is a demand for a few more stockholders, the Commission is of the opinion that authority should be granted to the applicant herein to issue \$500 additional stock for the purpose of extending its lines to the new subscribers desiring telephone service.

The Commission is of the opinion that the applicant herein should take over and own all of the subscriber's stations and drops now owned by the different stockholders of the company, because as its telephone service enlarges it will be practically impossible to continue to give satisfactory and efficient service with part of the subscribers owning and maintaining their own drops and subscriber's stations, and when these properties are all taken over by the company, then the company should be capitalized with sufficient stock to represent the entire telephone properties in service; and that rental charges should be made to all users alike, sufficient to pay the operating expenses, current maintenance and depreciation, and create a net surplus sufficient to pay reasonable dividends to the owners of the stock. This is a matter that can be worked out by the stockholders themselves, and the Commission simply recommends that, in its opinion, it will be more satisfactory for the future of the company.

The Commission is further of the opinion that the said company should keep separate, true and accurate accounts of all of the money paid into the company for additional stock, and that the said company should make detailed reports to the Commission as to the receipt and the expenditure of the same.

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The Commission is also of the opinion that the company should keep separate, true and accurate accounts of its entire operating income, showing in detail the receipts and disbursements of the same. Said accounts should show what money is being paid for general operating expenses, current maintenance and depreciation and what amount of money is being paid to the stockholders as dividends.

The Commission is further of the opinion that the company should make assessments upon its stockholders to rebuild its lines, to the end that the company will be able to render efficient service, not only to its stockholders but to those few renters who are paying regular rental charges.

ORDER.

It is, therefore, ordered, by the Nebraska State Railway Commission, That the \$1,275 of common stock previously issued by the applicant herein without the authority of the Commission be, and the same is hereby, validated, and that the applicant herein is hereby authorized to issue additional stock in the amount of \$500.

It is further ordered, That the applicant shall make reports to the Commission as to the sale of the said \$500 of stock and the amount received therefrom, and that said reports shall also show the expenditures of said money in detail.

Made and entered at Lincoln, Nebraska, this twenty-second day of May, 1914.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO ESTABLISH A SCHEDULE OF RATES AT ITS HASTINGS EXCHANGE.

Application No. 2076.

Decided May 28, 1914.

Increase in Rates upon Consolidation of Local Exchanges.

Application by the Lincoln Telephone and Telegraph Company which had acquired and consolidated the exchanges of the Nebraska Telephone

Company and the Hastings Independent Telephone Company at Hastings, for permission to establish a schedule of increased rates for the combined service.

Cost of Consolidated Plant — Estimated Earnings and Expenses — Allowance for Return upon Investment.

The Commission found from the records at hand without making any valuation, that the cost of the property to be employed in the consolidated service would be between \$235,000 and \$250,000; that taking into consideration the reduction in revenue due to the elimination of duplicate stations, the earnings from the consolidated plant under the rates formerly charged by the Nebraska company would be about \$50,400; \$8,403 less than the annual revenue from the two exchanges operating separately. On the basis of the expenses for the last six months of 1913, \$48,753.30 was deducted for current maintenance and realized depreciation, direct operating expenses, taxes, uncollectible accounts and 7 per cent. interest on \$235,000, leaving \$1,646.70 for a depreciation reserve. No toll investment, revenue, or expenses were included in these computations.

Allowance for Depreciation.

Held: That an allowance of only 5 per cent. for both maintenance and depreciation is not sufficient to maintain a plant at 100 per cent. efficiency; the Commission has in some instances allowed 9 per cent. and regards 8 per cent. as a minimum allowance.

Tentative Schedule of Rates.

Held: That although it appears that the rates formerly charged by the Nebraska company will not, under present conditions, produce sufficient revenue to care for operating expenses and dividends and at the same time provide a proper sum for depreciation, nevertheless the earnings will be sufficient to protect the property from serious loss for a period of several months during which the improvements to the plant can be completed and the necessary adjustments made to bring the system to a normal operating basis.

The Commission prescribed a tentative schedule of rates substantially in accordance with the rates formerly charged by the Nebraska company, the schedule to remain in effect for nine months with provision for an exhaustive investigation at the end of that period if the revenue under such rates is insufficient.

Area of Free Service — Imposition of Toll Charges.

It appeared that a heavy burden in the form of depleted toll revenues and increased traffic expenses had been imposed on both exchanges by the unusually large number of adjoining exchanges to which free service was

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afforded and that negotiations were in progress to place this traffic on a toll basis.

Held: That the discontinuance of this free service would insure a more equitable distribution of the charges and greatly improve the service and is necessary if the Bell rates are to be applied as a tentative schedule; moreover, the saving thus effected will contribute to the surplus available for depreciation.

Discount for Prompt Payment.

Held: That the proposed flat discount of 25 cents per month for payment within ten days is the standard throughout the State and has been approved in a number of exchanges by the Commission as it is a material incentive to prompt payment and results in the reduction of collection expenses.

Charge for Removal of Telephones and Changes in Type of Instrument.

Held: That the removal or change of location of telephones involves an expense which must be met by the body of subscribers unless a special charge is imposed; and that \$2.00 is a reasonable charge for changes of location within a building or changes in the class of instrument used.*

FINDING AND ORDER.

TAYLOR, Commissioner:

On February 1, 1912, the Lincoln Telephone and Telegraph Company acquired the exchange of the Nebraska Telephone Company at Hastings, and on June 30, 1913, it purchased the exchange of the Hastings Independent Telephone Company, since which time it has been operating both systems separately. The plant of the Hastings Independent Telephone Company was of the automatic type, and on April 1, 1914, had 1,056 subscribers. The other plant was of the manual type and on the same date had 1,719 subscribers. Upon the purchase of the automatic plant applicant commenced the consolidation of the two, converting the automatic plant to manual. This work is now about completed and application has been made for authority to establish a schedule of rates for the unified service.

The rates now in effect on the manual exchange are as follows:

* Editor's headnote.

	<i>Metallic circuit</i>		<i>Grounded circuit</i>	
	<i>Gross</i>	<i>Net</i>	<i>Gross</i>	<i>Net</i>
Individual business		\$42 00		\$42 00
Two-party business		36 00		36 00
Four-party business		27 00		.....
Individual residence		24 00		24 00
Two-party residence		18 00		18 00
Four-party residence		18 00
Farm residence		18 00	(Grounded circuit rates cancelled in so far as they relate to new business.)	

Desk 'phones on farm lines, 25 cents per month additional.

City bills are payable monthly in advance at the company's office.

Farm bills are payable quarterly in advance at the company's office.

The difference between gross and net rates will be allowed as a discount for prompt payment.

The discount on monthly bills shall be allowed if payment is made at the company's office on or before the tenth day of the month for which the bill is rendered.

The discount on quarterly bills shall be allowed if payment is made at the company's office during the first month of the quarter.

No discount shall be allowed if any balance for previous service rendered remains unpaid.

Inner radius is city limits.

Additional charge outside of inner radius, where there is an existing pole line, for each quarter mile or fraction thereof:

	<i>Metallic circuit</i>
One-party	\$5 00
Two-party	3 00
Extra service:	
Two parties using same telephone, business.....	12 00
Residence apartments, boarding houses, etc.....	3 00
Extension sets	12 00
Extension sets, special wall, residence only.....	6 00
Extension bells	3 00
Individual line, business, metallic circuit, for subscriber's incoming calls only (no signals provided at central office end of line).	24 00
Business 'phones on farm lines, 50 cents per month in addition to regular farm line charges.	

These same rates also apply to the company's exchanges at Hansen, Juniata, Pauline, Ayr and Prosser, with which there is a free exchange with the Clay County Rural Company's exchange at Glenville.

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The rates in effect on the automatic exchange are as follows:

	<i>Metallic circuit</i>	
	<i>Business</i>	<i>Residence</i>
Individual line	\$3 00	\$1 75
Farm lines	1 50	1 50
Extension sets	75	50

Exceptions to above rates, if any:

City schools and colleges, \$10.00 per year.

Five to eight on line, business, in nearby villages: \$2.00.

Individual lines, automatic, beyond city limits; increase on city rates according to distance.

Rate of \$1.25 per month, grounded line, out of Prosser exchange.

Fifty cents per month for instrument rental and switching on line owned by farmers on Prosser exchange.

Switching rates, per telephone, per month:

Eighty cents, received from Prosser telephones; includes maintenance of their system, etc.

Discounts on collections, or terms of payment, if any:

None.

How far from central office do rates for town service extend:

City limits.

Subscribers to the automatic service have been receiving a free exchange of service with Prosser, Kenesaw, Holstein, Roseland, Ayr, Blue Hill, Glenville, Inland, Bladen, Rosemont, Lawrence, Mt. Claire, Cowles and Guide Rock.

The schedule proposed by applicant for the consolidated service is as follows:

	<i>Metallic circuit</i>	
	<i>Gross</i>	<i>Net</i>
Individual business	\$57 00	\$54 00
Two-party business	51 00	48 00
Individual residence	27 00	24 00
Two-party residence	21 00	18 00
Farm residence	21 00	18 00
Farm business	27 00	24 00

Inner radius is city limits.

Additional charge outside of inner radius, where there is an existing pole line, for each quarter mile or fraction thereof:

	<i>Metallic circuit</i>
One-party	\$5 00
Two-party	3 00
Extra service:	
Two parties using same telephone, business.	12 00
Residence apartments, boarding houses, etc.	3 00
Extension sets	12 00
Extension sets, special wall, residence only.	6 00
Extension bells	3 00
Individual line, business, metallic circuit, for subscribers incoming calls only (no signals provided at central office end of line)	24 00

Includes free service to all exchanges in Adams County (except Glenwood company's exchange at Ayr) Glenville and Inland and a farm line into Trumbull. Toll rate to Blue Hill to be cut to 10 cents.

As the consolidation of the two plants is now ready to be effected, and as there is an urgent demand on the part of the patrons for the unified service, the Commission deemed it advisable to approve a new schedule without making the usual exhaustive valuation of the property and study of the accounts as to earnings and expenses. Accordingly a conference was held at Hastings on April 21, which was participated in by the members of the Commission, representatives of the applicant, and a number of other companies affected, and by a large number of patrons, at which time the matter was canvassed in a general way and the opinions of all parties received, together with such data and information as was available. Any rates approved at this time, therefore, will only be tentative and will be subject to further investigation in the future.

The approximate cost of the consolidated property to the applicant is disclosed by the books. The automatic plant was purchased for \$112,299, this figure excluding the cost of the toll property. The purchase price of the Nebraska Telephone Company's plant, exclusive of toll property, was \$87,758. Since the purchase of the two plants a considerable sum has been expended in improvements and betterments, the exact amount not being ascertainable as the work is not yet completed. The deductions from plant, and the allowance for salvage cannot be definitely deter-

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mined at this time. It appears from the records at hand, however, that the cost of the property as it will be employed in the consolidated service and with a proper allowance for working capital will be in the neighborhood of \$235,000 to \$250,000.

The earnings from both exchanges for the last six months of 1913 were \$29,401.51. This figure does not include any of the exchanges' income from toll, nor will the following figures relating to expenses include any of the expenses caused by toll operation, the plan of the Commission being to segregate the toll property from that devoted to the use of the exchange, together with the earnings and expenses from the same source. The expenditures for maintenance and realized depreciation for the same period were \$7,513.34; while the direct operating expenses were \$7,508.90. Added to this was \$741.84 for taxes and \$387.57 for uncollectible accounts, making a total charge against earnings for maintenance and depreciation, direct operating expenses, taxes and uncollectible accounts of \$16,151.65. Doubling these figures in order to arrive at a basis for a year's operation we have \$58,803.02 as the earnings from the two plants, out of which was expended \$32,303.30 for the purpose detailed above, leaving a balance of \$26,499.72 for return on the investment, and a reserve for depreciation. Assuming the cost value of the two plants to be \$200,000 and allowing 7 per cent. for rate of return, we have \$14,000 to be charged against the balance, leaving a surplus of \$12,499.72. On the above assumption it might appear that the present rates are sufficient to operate and maintain the plants, provide a depreciation fund and pay a reasonable return on the investment. The figures, however, are by no means conclusive as they have been subjected to but little analysis. A study of the history of the automatic plant, for example, shows that in the six years of its operation from 1908 to 1913, inclusive, there was expended for current maintenance slightly over 3 per cent. of the cost value of the plant annually, while at the same time there was set aside a surplus for depreciation of only 2 per cent. An allowance of

only 5 per cent. for both maintenance and depreciation is not sufficient to maintain the plant at 100 per cent. service efficiency, and at the same time protect the property against loss. The Commission has in some cases allowed 9 per cent. for these purposes and regards 8 per cent. as a minimum allowance.

The consolidation of the plants will result in a substantial reduction in revenue due to the duplication of telephones. As shown above, there were 2,775 stations in service on April 1, 1914. A study submitted by the company estimates the number of duplicates at 320, 206 of which are business subscribers. There will be a number of readjustments following the consolidation, so that it is impossible to accurately forecast the number of stations in each class of service and the exact revenue that will accrue therefrom, but the study referred to was made with considerable care, and is believed to be as accurate as any that could be made. Applying the so-called Bell rates to the 2,455 subscribers who can reasonably be expected to remain after the consolidation, the annual rental revenue will be \$50,400, which is \$8,403 less than the rental earnings from the two plants, at the present time. Applying this revenue to the consolidated plant, on the basis of the expenses for the last six months of 1913, the following result is obtained:

Annual earnings from consolidated plant.....	\$50,400 00	.....
Current maintenance and realized depreciation..		\$15,026 68
Direct operating expenses.....		15,017 80
Taxes		1,483 68
Uncollectible accounts		775 14
7 per cent. dividend on \$235,000 (estimated value of consolidated plant)		16,450 00
TOTAL	\$50,400 00	\$48,753 30
SURPLUS FOR DEPRECIATION RESERVE.		1,646 70

The tax item used above is the actual payment as shown by the books and covers nothing but general taxes. If an occupation tax is levied it would reduce the net revenue and would necessarily have to be considered in the fixing of the rates.

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While this indicates that the Bell rates will not, under present conditions, produce sufficient revenue to take care of operating expenses and dividends, and at the same time provide a proper amount for depreciation, yet the earnings will be sufficient to protect the property from serious loss for a period of several months, during which time the improvements to the plant can be completed and the necessary adjustments brought about to bring the system to a normal operating basis. The schedule proposed by the applicant increases the rates to business subscribers only, adding \$1.00 per month to the present Bell rates. The increase would produce slightly less than \$4,000 per year more revenue.

It will be observed from a study of the present schedules that an unusually large amount of "free service" is being given at the present time, particularly by the independent exchange. Through an arrangement with the Glenwood Telephone Company, the Hastings Independent company gave free service to all of the exchanges on that system, which covers practically all of Webster County. It also had free exchange arrangements with the other independent companies in Adams County. The situation with respect to the old Bell exchange is somewhat different for the reason that five of the exchanges with which there is a free exchange of service, namely, Ayr, Pauline, Juniata, Prosser and Hansen are owned by the Lincoln company and the subscribers pay the same rates as are in effect at Hastings. There is a free exchange of service, however, with the exchange of the Clay County Rural 'Phone Company at Glenville. The large amount of free service thus furnished has imposed a heavy burden on the companies affected, the results being reflected in a depleted toll revenue and an increased traffic expense. Negotiations are now in progress to place this traffic on a message or toll basis as is indicated by notice served upon the Commission by the secretary of the Glenwood Telephone Company. This letter was received by the Commission on May 2, which was subsequent to the conference at Hastings. The letter says in part:

"It virtually has been agreed by the parties to establish a toll rate of ten cents per call between Hastings and the Glenwood exchanges at Ayr, Blue Hill, Bladen, Holstein and Roseland, and that a contract will soon be entered into after a few minor points have been agreed upon, subject to the approval of the railway commission;

At a meeting of the directors of the Glenwood Telephone Company held April 30, nine of the eleven directors, several members of the district boards and the executive board were present to consider the proposed contract; no objections were made to adopt the contract, except by the director of the Holstein district.

The Glenwood Telephone Company therefore requests that that part of the application of the Lincoln Telephone and Telegraph Company referring to the free service with Holstein and Roseland be not granted."

The Commission is advised that this contract has not yet been consummated but that negotiations are still in progress. Negotiations are also being conducted with the other companies affected, with the object of discontinuing the free service arrangements and placing the traffic on a message basis. There can be no question but that the discontinuance of the free service would insure a more equitable distribution of the charges and greatly improve the service. Its discontinuance is likewise necessary if the Bell rates as applied in the above study are to be approved as the tentative schedule for the consolidated service. The placing of the free service on a toll basis will affect the company in one of two ways, either it will reduce the number of calls and thus reduce the traffic expense and the investment incident thereto, or it will increase the toll revenue. In either event, the net revenues of the applicant will be materially increased. To what extent, it is impossible to predict, but that is another matter that will develop from a trial of several months. At any rate, the saving thus effected will contribute to the surplus for depreciation and render more unlikely any injury to the property through a trial on the basis outlined.

At the present time a discount of 15 cents per month on business telephones and 10 cents per month on residence telephones is being allowed the subscribers on the automatic exchange for payment of monthly bills within ten

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days. The application in the present case provides for a flat discount of 25 cents per month from the gross rate to all subscribers. This is a discount that is standard over the State, and has been approved in a number of cases by the Commission. Investigation shows that it is a material incentive to prompt payment, and results in a reduction of collection expense. It is regarded as a reasonable rule and will be approved.

The records for the six months referred to above show that the removal of telephones and their change from one location to another imposed upon the two companies an expense of \$1,592.99, or about \$3,000 per year. This is a burden, which if not provided for by a special charge, must be passed along to the public in the monthly rates. That the latter method is inequitable is obvious, for the reason that many of the changes are unnecessary, and in some instances are prompted by whimsical motives. As stated in Nebraska State Railway Commission Reports, Application 1637 (p. 21),*

"It seems unfair, to the Commission, that patrons who are permanent and who do not demand frequent removals and changes should be called upon to assist in paying for the expense of making removals and changes for others, and therefore a schedule of rates is made to cover in part at least the expense incurred in this manner."

The charge imposed in that order was \$2.00 for a move within a building or change of class of instrument. This appears to be a reasonable charge in the present case, and for the reasons given will be approved as a part of the schedule.

In view of the lack of time in which to make the necessary valuation and accounting, and in view of the satisfactory showing made by an application of the old Bell rates to the system after consolidation, the Commission is of the opinion the public will be better served and the requirements of the company substantially met if this schedule is

**In the Matter of the Application of the Lincoln Telephone and Telegraph Company for Permission to Consolidate the Exchanges in Lincoln, etc.*, June 28, 1913, printed in Commission Leaflet No. 19, at page 134.—Ed.

applied for a period of at least nine months. With the discontinuance of the free service and the adjustments suggested, it is apparent that the company will not seriously suffer. At the end of nine months the plant should be working smoothly, the classification of subscribers definitely determined, the earnings and expenses should be on stable basis, and the whole system should have reached a normal condition. If, at the end of that period, the company finds that its revenues are insufficient and concludes to ask for an increase of rates, the Commission will make a thorough and exhaustive investigation to determine definitely what the rates should be.

ORDER.

It is, therefore, ordered, That the Lincoln Telephone and Telegraph Company be, and the same hereby is, authorized to charge and collect until the further order of the Commission, from and after June 1, 1914, the following schedule of rates on its Hastings exchange:

	<i>Metallic circuit</i>	
	<i>Gross</i>	<i>Net</i>
Individual business	\$45 00	\$42 00
Two-party business	39 00	36 00
Individual residence	27 00	24 00
Two-party residence	21 00	18 00
Farm residence	21 00	18 00
Farm business	27 00	24 00

The same rates to apply at Hansen, Juniata, Pauline, Ayr and Prosser. Free interchange toll service for use of subscribers only. Non-subscribers at exchange used to pay regular rate.

City bills are payable monthly in advance at the company's office.

Farm bills are payable quarterly in advance at the company's office.

The difference between gross and net rates will be allowed as a discount for prompt payment. The discount on monthly bills shall be allowed if payment is made at the company's office on or before the tenth day of the month for which the bill is rendered.

The discount on quarterly bills shall be allowed if payment is made at the company's office during the first month of the quarter.

No discount shall be allowed if any balance for previous service rendered remains unpaid.

Inner radius is city limits.

Additional charge outside of inner radius, where there is an existing pole line for each quarter mile or fraction thereof:

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	<i>Metallic circuit</i>
One-party	\$5 00
Two-party	3 00
Extra service:	
Two parties using same telephone, business.	12 00
Residence apartments, boarding houses, etc.	3 00
Extension sets	12 00
Extension sets, special wall, residence only.	6 00
Extension bells	3 00
Individual line, business, metallic circuit, for subscriber's incoming calls only (no signals provided at central office end of line)	30 00

Desk telephones on farm lines, 25 cents per month extra.

Free service to Lincoln Telephone and Telegraph exchanges to subscribers paying above rates at Hansen, Juniata, Pauline, Ayr and Prosser.

Removals and changes:

Moving charge within building or change of class of instrument, \$2.00.

Moving charge from one building to another, \$2.00.

Where installation is made for less than one full year's service a charge will be made for such installation, per telephone installed, of \$2.00.

No charge will be made for removing a telephone from one building to another, if the telephone desired moved has been used at the one building for at least the preceding twelve months.

No charge will be made when necessity for change or removal is occasioned by fire.

No charge will be made for removal where subscriber moves to location at which a telephone is already installed for the class of service desired.

Any other or special service, not enumerated above, shall be charged for at rates now on file or that may be authorized on application duly made to the Commission.

It is further ordered, That the schedule of rates now in effect on the Hastings Independent Telephone Company's exchange be, and the same are, hereby cancelled.

Made and entered at Lincoln, Nebraska, this twenty-eighth day of May, 1914.

NEW HAMPSHIRE.

Public Service Commission.

**PETITION OF NEW ENGLAND TELEPHONE AND TELEGRAPH
COMPANY FOR AUTHORITY TO EXTEND LINES INTO GIL-
MANTON.**

File No. D-183 — Order No. 258.

Filed December 26, 1913 — Granted January 8, 1914.

(4 N. H. P. S. C. R. 133)

Authority to Extend Lines into Occupied Territory.

APPEARANCE:

M. B. Jones, for petitioner.

REPORT.

BENTON, Commissioner:

This is a petition by the New England Telephone and Telegraph Company asking for authority to extend its lines into the town of Gilmanton. The petitioner already has a telephone system in Pittsfield and desires to serve the public in Gilmanton, which adjoins Pittsfield.

The Winnebepesaukee Telephone Company, a corporation controlled by the petitioner, already has lines in Gilman-ton, as does also the Citizens Telephone Company, an in-dependent company.

Both of these companies have consented to the extension of the lines of the New England company proposed, and an order will be made granting the authority asked for.

NILES AND WORTHEN, Commissioners, concurred.

Filed January 8, 1914.

ORDER No. 258.

Upon the foregoing report, which is made a part hereof,

It is ordered, That the permission of this Commission be, and is, granted to said New England Telephone and Telegraph Company to construct the necessary plant, lines and apparatus in the town of Gilmanton to enable it to engage in the business of transmitting telephone and telegraph messages therein, and that the approval of the Commission be and is granted to said corporation for such construction and engaging in business.

By order of the Public Service Commission, this eighth day of January, 1914.

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY v.
JOHN E. GREENFIELD *et al.*:
PETITION FOR RIGHT OF WAY FOR THE BUILDING OF A TELEPHONE AND TELEGRAPH LINE.

File No. D-150 — Order No. 260.

Filed January 20, 1913 — Decided January 22, 1914.

(4 N. H. P. S. C. R. 153.)

Construction of Pole Line — Right of Way over Private Property Granted by Commission — Compensation Fixed by Commission.

APPEARANCES:

W. T. Gunnison, for the petitioner.

Leslie P. Snow, Elmer J. Smart, Harold F. Smith, for Greenfield and other land owners, except Lahey.

REPORT.

BENTON, Commissioner:

This is a petition by the New England Telephone and Telegraph Company representing that in the construction of certain toll lines in the counties of Strafford and Carroll, it is necessary in order to meet the reasonable require-

ments of service to the public to construct lines across land of the respondents, and that it cannot agree with the respondents as to the necessity for the required rights, nor as to the price to be paid therefor. The Commission is asked to determine the necessity of such construction, and the compensation to be paid for the required rights.

A view was taken by the Commission of each tract of land affected, and hearings were held at Rochester on November 5 and 6, 1913. A continuance was granted to allow an amendment to bring in a land owner not named in the petition as first filed. This amendment was made November 26, 1913, and upon the same, notice was ordered to the land owner so added as respondent, and a hearing was ordered at Concord on December 23, 1913. Upon the date of hearing the case, by agreement, was submitted on the evidence already taken.

The necessity for the proposed taking does not appear seriously to be contested; but we find from the evidence before us that such taking is necessary in order to meet the reasonable requirements of service to the public.

An order will be made specifically describing the rights found to be necessary, and fixing the compensation to be paid therefor.

NILES AND WORTHEN, *Commissioners*, concurred.

ORDER No. 260.

In the matter of the petition of the New England Telephone and Telegraph Company *v.* John Greenfield, Walter S. Wentworth, Charles Wentworth, Luther Hayes, Thomas Lahey, Walter W. Sanborn and Mary Sanborn, filed June 20, 1913, praying for rights of way for its pole line over land of said respondents, situated in Rochester and Milton, in the county of Strafford and in the towns of Brookfield and Madison, in the county of Carroll, in said State.

This Commission, having upon due notice to all parties in interest, heard and determined the necessity for the

rights prayed for, and the compensation to be paid therefor, now this twenty-second day of January, 1914, orders, adjudges and decrees as follows:

1. That it is necessary to meet the reasonable requirements of service to the public, that said New England Telephone and Telegraph Company, a public utility subject to supervision under Chapter 164 of the Laws of 1911, as amended by Chapter 145 of the Laws of 1913, should construct a line of poles with the necessary cross-arms, wires, insulators, brackets, guy-wires and other accessories, across the lands of the persons named in said petition, as hereinafter more specifically set forth, and that said New England Telephone and Telegraph Company and its successors and assigns, by virtue of its said petition and this decree shall be entitled to construct and forever maintain a line of poles in the locations hereinafter specifically set forth, and to place upon said poles the necessary cross-arms, wires, insulators, brackets, guy-wires and other accessories; also that in constructing and maintaining said line of poles, with wires, fixtures, guy-wires and supports as hereinbefore set forth, it shall have the right to cut down or keep trimmed all trees and bushes upon a strip of land thirty feet in total width, being fifteen feet on each side of a center line running through said strip; also that it shall have the right at any time to pass and re-pass with men, teams and other vehicles along and under said lines of wires across lands and to enter upon said lands from the highway as hereinafter specifically provided:

The rights hereby granted are more specifically described as follows:

2. Said pole line shall cross land of John Greenfield in said city of Rochester in the following location:

Beginning at a point, on the southerly line of the New State Road leading from the said city of Rochester to the town of Milton, where the Boston and Maine Railroad right of way crosses the said highway and distant from the nearest rail of said railroad measured at right angles

therefrom twenty-five feet, thence running parallel to said railroad right of way north 9 degrees 50 minutes east across the said highway and across the land of said John Greenfield to the land of one Wilkinson. The eastern boundary of said railroad location to be the western boundary of said telephone location and said location to be thirty feet in width.

Said company shall have the right in constructing and maintaining its said pole line with wires, fixtures, guy-wires and supports thereon as hereinbefore set forth, to cut down and keep trimmed all trees and other growth within said location thirty feet in width; providing, however, that said company shall not thereby acquire any title to or ownership in said trees or other growth, and that the same shall remain the property of said Greenfield; and said company shall also have the perpetual rights by its agents and servants for the purpose of patrolling and maintaining said line, to pass and repass along and under the same in the route aforesaid, and the right of way to enter upon said location from the New Road, so-called, or from the Old Road, so-called, where the location crosses said highways, as shown on plans attached hereto.

This Commission determines the compensation to be paid for the above rights specified to be one hundred and seventy-five dollars, and renders judgment against said New England Telephone and Telegraph Company in favor of said John Greenfield for said sum.

3. Said pole line shall cross the land of Walter S. Wentworth situated in said city of Rochester, in two locations:

First Location: Beginning at a point on the Chestnut Hills Road, so-called, on the easterly side of the Boston and Maine Railroad location distant from the nearest rail of said railroad measured at right angles therefrom one hundred and nineteen feet, thence running in a northwesterly direction four hundred ninety-five feet to a point distant from the nearest rail of the said railroad fifty-one feet; thence running northwesterly seven hundred sixty

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feet to a point distant from the nearest rail of the said railroad forty feet; thence running in a northeasterly direction three hundred fifty-eight and five-tenths feet to land of one Chamberlain, at a point distant from the nearest rail of said railroad fifty-two feet. The said points designated above to be on the center line of said location, and said location to be thirty feet in width.

Second Location: Beginning on the easterly side of the Boston and Maine Railroad location at the northwest bound of land of one Chamberlain, formerly belonging to Ira Wentworth at a point forty-nine feet from the nearest rail of said railroad; thence running in a northeasterly direction three hundred twenty-five feet by land of said railroad to the New State Road, leading from Rochester to Milton, at a point fifteen feet easterly from the railroad right of way. The said points designated above to be on the center line of said location, and said location to be thirty feet in width.

Said company shall have the right in constructing and maintaining its said pole line with wires, fixtures, guy-wires and supports thereon as hereinbefore set forth, to cut down and keep trimmed all trees and other growth within said location, thirty feet in width, providing, however, that said company shall not acquire thereby any title to or ownership in said trees or other growth, and that the same shall remain the property of said Walter S. Wentworth; and said company shall also have the perpetual rights by its agents and servants for the purpose of patrolling and maintaining said line, to pass and repass along and under the same in the route aforesaid, and the right to enter upon the first described location from the Chestnut Hills Road, so-called, where the location crosses said highway, and to enter upon the second location from the New State Road, so-called, where the location crosses said highway as shown on plan hereto attached.

This Commission determines the compensation to be paid for the rights above specified to be two hundred dollars and renders judgment against said New England

Telephone and Telegraph Company in favor of Walter S. Wentworth for said sum.

4. Said pole line shall cross the land of Charles Wentworth situated in Rochester and Milton in the following location:

Beginning on the easterly side of the Boston and Maine Railroad at the boundary line between the land of J. Spaulding and Sons' Company and said Wentworth at a point forty-seven feet distant from the nearest rail of the main line of the said railroad measured at right angles therefrom, thence running in a northeasterly direction one hundred ninety-three feet to a point distant from the nearest rail of the main line of said railroad measured at right angles therefrom fifty-two feet; thence running in a northwesterly direction sixteen hundred forty feet to a point thirty-nine feet distant from the nearest rail of the main line of said railroad, thence running northwesterly eight feet to land now or formerly of one Ellen Twombly at a point fifteen feet easterly from the easterly boundary of said railroad. Said points above designated to be on the center line of the said location, and said location to be thirty feet wide.

Said company shall have the right in constructing and maintaining its said pole line with the wires, fixtures, guy-wires and supports thereon as hereinbefore set forth to cut down and keep trimmed all trees and other growth within said location thirty feet in width, providing, however, that said company shall not acquire any title to or ownership in said trees or other growth, and that the same shall remain the property of said Charles Wentworth; and said company shall also have the perpetual rights by its agents and servants for the purpose of patrolling and maintaining said line to pass and repass along and under the same in the route as aforesaid, and the right of way over the right of way leading from said State Road to Spaulding's Mills to enter upon said location from the New Road, so-called, where the location crosses said highway, as shown on a plan hereto attached.

This Commission determines the compensation to be paid for the rights above specified to be one hundred and seventy-five dollars, and renders judgment against said New England Telephone and Telegraph Company in favor of said Charles Wentworth for said sum.

5. Said pole line shall cross the land of Luther Hayes, situated in said Milton, in the following location:

Beginning at a point on the easterly side of the Boston and Maine Railroad location at the boundary between land of Hayes and Wyatt and land of Luther Hayes at a point distant from the nearest rail of the said railroad measured at right angles therefrom sixty-three feet, thence running north ten degrees east four hundred and seventy feet to a point on the boundary between said Hayes and Hayes and Wyatt, said point being distant from the nearest rail of the Boston and Maine Railroad fifty-three feet. Said location to be thirty feet in width and said points above designated to be on the center line of the same.

Said company shall have the right in constructing and maintaining its said pole line with wires, fixtures, guy-wires and supports thereon as hereinbefore set forth, to cut down and keep trimmed all trees and other growth within said location thirty feet in width; providing, however, that said company shall not thereby acquire any title to or ownership in said trees or other growth, and that the same shall remain the property of said Hayes; and said company shall also have the perpetual rights by its agents and servants for the purpose of patrolling and maintaining said line, to pass and repass along and under the same in the route aforesaid, and the right of way to enter upon said location from the Old Wheel Road, so-called, where the location crosses said highway as shown upon the plan hereto attached.

This Commission determines the compensation to be paid for the rights above specified to be sixty dollars, and renders judgment against said New England Telephone and Telegraph Company in favor of said Luther Hayes for said sum.

6. Said pole line shall cross land of Thomas Lahey in said Madison in the following location:

Beginning at a point in the line between land of J. D. Bemis and said land of Lahey, which point is sixty-four and five-tenths feet from the center of the track of the Conway Branch of the Boston and Maine Railroad, thence running north nineteen degrees thirty minutes east, parallel with the center of said track, and sixty-four and one-half feet distant therefrom, a distance of two thousand two hundred eighty-five feet to an angle, thence running north thirty-three degrees east about three thousand four hundred and forty feet on said land of Lahey to the Madison-Albany town line. Said location to be thirty feet in width, and the above designated points in the center line of said location.

Said company shall have the right in constructing and maintaining its said pole line with wires, fixtures, guy-wires and supports thereon as hereinbefore set forth, to cut down and keep trimmed all trees and other growth within said location thirty feet in width; providing, however, that said company shall not thereby acquire any title to or ownership in said trees or other growth, and that the same shall remain the property of said Lahey; and shall also have the perpetual rights by its agents and servants for the purpose of patrolling and maintaining said line, to pass and repass along and under the same in the route aforesaid, and the right to enter upon said location from the State Road, so-called, where said location crosses said highway as shown on the plan attached hereto.

This Commission determines the compensation to be paid for the right above specified to be two hundred and fifty dollars, and renders judgment against said New England Telephone and Telegraph Company in favor of Thomas Lahey for said sum.

7. Said pole line shall cross land of Walter W. Sanborn and Mary Sanborn in said Brookfield in two locations as follows:

First Location: Beginning at a stake in the ground on the line between the land of Lillian Edwards and Walter

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W. Sanborn, eighty-four feet southerly from the highway leading from Sanbornville to Brookfield, thence running south sixty-five degrees and thirty minutes east, ten hundred and twenty-six feet across said highway to land of George West.

The above described points are on the center line of the location and said location is to be thirty feet in width.

Second Location: Beginning on the southerly side of the highway leading from Union to Sanbornville past the house of the said Walter W. Sanborn, at a point five hundred and fifty-three feet westerly from the southwesterly corner of the said house of Walter Sanborn, thence running south six degrees east, fourteen hundred feet, thence running south thirty-five degrees and twenty minutes east, sixteen hundred and thirty-one feet to land of Mrs. Allie Bowdens.

The above described points are on the center line of the location and said location is to be thirty feet in width.

Said company shall have the right in constructing and maintaining its said pole line with wires, fixtures, guy-wires and supports thereon as hereinbefore set forth to cut down and keep trimmed all trees and other growth within said location thirty feet in width; providing, however, that said company shall not thereby acquire any title to or ownership in said trees or other growth, and that the same shall remain the property of said Sanborns, and shall also have the perpetual right by its agents or servants for the purpose of patrolling and maintaining said line, to pass and repass along and under the same in the route aforesaid, and the right of way to enter upon said locations from the highway where said locations touch said highway, as shown on the plans hereto attached.

This Commission determines the compensation to be paid for the right above specified to be two hundred dollars, and renders judgment against said New England Telephone and Telegraph Company in favor of Walter W. Sanborn and Mary Sanborn for said sum.

8. The location of the above described pole line across

property of the several owners is shown on duplicate plans in detail accompanying this decree each marked "Public Service Commission D—150" and authenticated by the attestation of the clerk of this Commission. One set of said plans shall remain on file with this Commission, and the other set shall be filed for record in the Registry of Deeds for Strafford and Carroll counties, the plans pertaining to land of said Greenfield, Walter S. Wentworth, Charles Wentworth and Hayes in the Registry of Deeds for Strafford County, and those pertaining to land of said Lahey and Walter W. Sanborn and Mary Sanborn in the Registry of Deeds for Carroll County.

9. All rights herein described shall be exercised in a reasonably careful and prudent manner so that no injury which can be avoided or prevented by the exercise of reasonable care shall result to the lands in respect to which the same are granted by reason of the construction, maintenance and operation of said lines.

10. A certified copy of the petition aforesaid and amendments thereto and this decree thereon shall be recorded in the Registry of Deeds in said counties of Strafford and Carroll.

By order of the Public Service Commission, this twenty-second day of January, 1914.

PETITION OF CANAAN PEOPLE'S TELEPHONE COMPANY FOR
PERMISSION TO OPERATE A TELEPHONE UTILITY IN THE
TOWNS OF CANAAN AND ENFIELD.

File No. D-188—Order No. 300.

Filed January 11, 1914—Decided April 23, 1914.

(4 N. H. P. S. C. R. 300.)

**Public Convenience and Necessity—Invasion of Occupied Territory—
Duplication of Facilities—Rates Charged by Utility Occupying
Field—Permission to Operate in Limited Area.**

Petition by the Canaan People's Telephone Company for permission to construct and operate telephone lines in Canaan and Enfield.

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The Mascoma Telephone Company operated lines in both towns which would be largely paralleled by the proposed lines. The petitioner had begun construction in the western portion of Canaan in ignorance of the necessity of securing the Commission's permission, but had suspended construction when its attention was called to this requirement.

No objection was made to the construction of lines in the western portion of Canaan, provided the petitioner were restricted to that section. The members of the petitioning company all resided in that section and their needs would be fully met by such construction.

No complaint was made against the service afforded by the Mascoma company, the petition resting solely upon the belief that the petitioner could afford service at rates lower than those charged by the Mascoma company.

Held: That although a lower rate might be secured for a time, it is doubtful whether it could be maintained and satisfactory service afforded;

That complaint may be made at any time against the Mascoma company if its rates are unreasonable or discriminatory in any respect;

That the duplication of facilities would result ultimately to the disadvantage of the public.

An order was issued authorizing the construction of telephone lines by the petitioner in the western portion of Canaan.*

APPEARANCES:

Canaan People's Telephone Company, by *H. B. Gates*, president, and *Charles E. Kenyon*, vice-president.

Mascoma Telephone Company, by *H. B. Jones*, counsel.

REPORT.

BENTON, Commissioner:

This is a petition by the Canaan People's Telephone Company asking the Commission to grant its permission and approval to the construction and operation by the petitioners of telephone lines in the towns of Canaan and Enfield. The Mascoma Telephone Company owns and operates lines in both towns which will be largely paralleled by the proposed lines.

A hearing was held at Concord on February 17, 1914.

In the early part of the summer of 1913 the petitioners started to build a co-operative telephone line in the west part of the town of Canaan, with the intention of building

* Editor's headnote.

north and connecting with the Lyme People's Telephone Company, and of building south through Enfield to Lebanon, provided sufficient numbers should desire to join the association. The building of the line in Canaan was begun without knowledge upon the part of the petitioners of the requirement of the statute that the approval of this Commission must be first obtained, and was immediately suspended when attention was called to such requirement.

No objection is made to the granting of the petition so far as the town of Canaan is concerned, provided the petitioners are restricted to the western part of the town where the lines have been already constructed. It appeared upon the hearing that the present members of the petitioning company all live in said western part of Canaan. It was admitted that their needs would be fully met by permission to build and operate in the part of the town where they live, but it was represented by them that other persons, resident in the eastern part of Canaan and Enfield, would become members of the association if the company was permitted to operate wherever it might find subscribers in either town.

In passing upon applications of this character we must have regard to the evident intent of the statute under which the same are made. This was discussed by the Commission in *Parker et al. v. Hudson Water Company et al.*,* 3 P. S. C. Rep. 150, as follows:

"The section of the statute which forbids a utility, without the consent of this Commission, to begin business in a town or city where it was not formerly operating provides that 'The Commission shall grant such permission whenever it shall, after due hearing, determine and find that such engaging in business * * * would be for the public good and not otherwise * * *'

"What was the purpose of this legislative provision which grants to a utility already established in any town a monopoly of the service there until the Commission, by an order, shall permit the entrance of another utility in competition? We think that it was to secure to the public the service of public utilities at the lowest cost consistent with efficient service.

* Printed in Commission Leaflet No. 23, at page 225.—Ed.

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“There are many important differences between public service corporations and ordinary commercial enterprises. The former usually require a much larger investment in plant, equipment and other fixed property, which in turn means heavy annual charges for interest, repairs and maintenance. The conditions which surround the former are also of such character that the services which they render can usually be furnished at a much lower cost by one plant than by two or more in the same locality. * * * Duplication of such plants is a waste of capital, whenever the services can be adequately furnished by one plant. It necessarily means that interest and maintenance must be earned on a much greater, if not twice as great an investment, and that the actual cost of operation is likely to be relatively higher.’ *Application La Crosse Gas and Electric Company*, 2 W. R. C. Rep. 5.

“The legislature, we believe, by the passage of the act relieving existing utilities from competition and placing the regulation of rates in the hands of this Commission, intended to create a situation where utilities could supply service at the smallest possible cost to themselves, and to furnish a means whereby they might be compelled to furnish such service at only such an advance over cost as would yield a reasonable profit, thereby saving to consumers the amount which would, under the competitive system, be wasted in unnecessary duplication of plants.* *

“Before granting authority for the entrance of a competing utility into territory already occupied, the Commission must determine and find, upon a consideration of all the facts in the particular case, that the community will derive advantage from the competition created which will outweigh in importance any disadvantages or evil results which may be expected to arise therefrom.”

This is the same view which has been taken by other Commissions acting under similar statutes, as will be seen by the following expressions from reports of such Commissions disposing of applications similar in purpose to this:

“The controlling purpose * of the statute is to prevent unnecessary and wasteful duplication in public utilities. It is the policy of the public utilities law, of which this section is a part, in cases where it applies, to substitute for competition regulation by governmental authority.” *Application of Citizens' Telephone Company of Eau Claire*.* Wisconsin Railroad Commission (decided July 30, 1913).

See also *In re Owen Telephone Company*,† Wisconsin Railroad Commission (decided January 19, 1914).

* Printed in Commission Leaflet No. 24, at page 473.—Ed.

† Printed in Commission Leaflet No. 27, at page 225.—Ed.

"The telephone business more than any other demands a single service or a single utility. A patron of a telephone company desires to be connected with other telephone patrons of the community. This can be accomplished more cheaply and satisfactorily by a single company than by two or more companies." In re *Petition of Timmons*,* Indiana Public Service Commission (decided December 31, 1913).

"If * a territory is completely served and the utility has to the best of its ability given fair treatment to its patrons * this Commission would be slow to permit a competitor to come into this territory." *Application of Ashton and St. Anthony Power Company*,† Idaho Public Utilities Commission (decided November 12, 1913).

"The application * raises explicitly the issue whether, in territory now served adequately by one telephone company, it is necessary and proper for the public convenience, and whether it properly conserves the public interests, to admit a competing telephone service.

"The general consideration in favor of unified and comprehensive operation of public utilities, as against rival service in the same locality, are perhaps stronger in the case of telephone service than in the case of other public utilities. To the consumer of gas, water or electric current it usually matters but little directly whether his neighbors take service from the same source of supply. In telephone service, however, intercommunication is the heart of the matter. Subscribers to rival exchanges in the same community are separated from each other, except under the penalty of subscribing to both companies. The communication of the Merchants' Association of New York addressed on June 29, 1905, to the Board of Estimate and Apportionment in opposition to the grant of a franchise to any independent company in that city, puts the matter in a nutshell, where it says:

"Competition in telephone service does not offer a choice of benefits, but compels a choice of evils — either a half service or a double price."

"The New Orleans Board of Trade, in its report in 1908, reached the same conclusion and concluded that:

'the interests of the city will be best served by having only one system; provided always that the proper regulations as to service, rates and extensions of its business can be enforced so as to safeguard the rights of the public.' * * *

"The Board, therefore, is strongly of opinion that as a general proposition competitive telephone service is not necessary and proper for the public convenience, and does not properly conserve the public interests.

* Printed in Commission Leaflet No. 27, at page 42.—Ed

† Printed in Commission Leaflet No. 25, at page 932.—Ed.

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"It remains to determine whether, in the particular situation under consideration, there are exceptional or unusual conditions in which an exception ought to be made to the general rule of maintaining for the company first in possession the maximum opportunity to afford a comprehensive service." *Application Eastern Telephone and Telegraph Company*,* 1 N. J. Board of Public Utility Commissioners, 739.

No complaint was made of the service of the Mascoma company. The petition rests solely upon the belief of the petitioners that the new company can supply service throughout the two towns at a rate less than the present rate of the Mascoma company. That such lower rate might be secured for a time is probable; that it can be permanently enjoyed together with satisfactory service is doubtful. No claim was made at the hearing that the Mascoma company was earning an excessive return upon its investment. If it is, or if its rates are discriminatory or unfair in any respect, complaint may at any time be made to this Commission, which has full power to fix just and reasonable rates. Upon all the evidence we cannot find that it would be for the public good to duplicate the present properties of the Mascoma company. On the contrary, considering the entire population, we believe that such duplication would result ultimately to the disadvantage of the public.

An order will be made granting the consent and approval asked as to the town of Canaan, restricting the operations of the petitioners, however, to the western part of said town.

NILES and WORTHEN, *Commissioners*, concurred.

ORDER No. 300.

Upon the foregoing report, which is made a part hereof, *It is ordered*, That the permission and approval of this Commission be and is granted to the Canaan People's Telephone Company to construct a plant and lines in the town of Canaan, to equip the same with necessary apparatus and

* Printed in Commission Leaflet No. 20, at page 367.—Ed.

appliances and to engage in the business of transmitting telephone messages, and in the operation of a telephone utility in said town; provided, however, that said permission and approval are granted upon the express terms and conditions that said lines and apparatus shall be constructed, and said utility shall engage in business, in said town only within the territory lying west of a line drawn parallel with the eastern boundary of said town and three miles westerly therefrom, without further authority from this Commission.

By order of the Public Service Commission, this twenty-third day of April, 1914.

PETITION OF CANTERBURY AND BOSCAWEN TELEPHONE COMPANY FOR AUTHORITY TO ISSUE STOCK.

File No. D-192 — Order No. 304.

Filed January 24, 1914 — Decided May 7, 1914.

(4 N. H. P. S. C. R. 312)

Power of Commission to Legalize Stock Issued without Authority — Issuance of New Stock in Lieu Thereof — Waiver of Stockholders' Right to Subscribe Pro Rata.

APPEARANCES:

Joseph A. Donigan and *Martin M. Howe*, for the petitioner.

REPORT.

NILES, *Commissioner*:

On July 10, 1909, the stockholders of the Canterbury and Boscawen Telephone Company voted to increase the capital stock of the corporation from \$2,500 to \$5,000 by the issuance of 100 shares of said stock of the par value of \$25.00 each.

Prior to the passage of the Public Service Commission Act the directors had issued twenty-four shares. Subsequent to the passage of said act, without knowledge of its provisions, they issued thirty-seven additional shares.

This petition asks that the issuance of said thirty-seven shares may be legalized, and that authority may be granted

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to issue the remaining thirty-nine shares of said one hundred shares authorized by said stockholders' vote July 10, 1909.

A hearing was held at the office of the Commission on April 1, 1914. Evidence was offered to show that since July 1, 1911, extensions have been made to the petitioner's lines at a cost considerably in excess of the amount of \$924, and that other extensions are contemplated and necessary.

We find that the stock issued since the passage of the act creating this Commission was issued innocently and without intention to evade the law, and that the proceeds thereof have been properly expended.

We are in doubt, however, as to our power to make an order legalizing an issue of stock made since the passage of the Public Service Commission Act without authorization from this Commission. The petition requests that the petition be considered as a petition for authority to issue seventy-six shares of stock, thirty-seven shares of which shall be issued to take up said stock inadvertently issued, and the remaining thirty-nine to pay for extensions made since July 1, 1911, and to be made in the future.

We find the proposed issue of stock reasonably requisite for the purposes stated, and are prepared to grant the authority asked for.

The stockholders of the petitioner have unanimously voted that the proposed issue shall not be offered proportionately to stockholders, but shall be disposed of by the directors at or above par.

An order will issue accordingly.

BENTON and WORTHEN, *Commissioners*, concurred.

ORDER No. 304.

Upon the foregoing report, which is made a part hereof, *It is ordered*, That the Canterbury and Boscawen Telephone Company be, and is, authorized to issue seventy-six shares of its capital stock of the par value of \$25.00 each, the same to be disposed of by its directors as provided for by the unanimous vote of the stockholders of said corpora-

tion, passed April 24, 1914, a certified copy of which was filed with this Commission May 1, 1914,

And it is further ordered, That the proceeds of said stock shall be used only for the purpose of taking up thirty-seven shares of stock of the par value of \$25.00 each of said company, inadvertently issued, and the balance to be used to pay for extensions made to the petitioner's properties since July 1, 1911, and to be made in the future.

And it is further ordered, That on July first and January first in each year said corporation shall file with this Commission a detailed account, duly sworn to by its treasurer, showing the disposition of the proceeds of said stock until the whole of said proceeds shall have been accounted for.

By order of the Public Service Commission, this seventh day of May, 1914.

NEW YORK.

Public Service Commission — Second District.

IN THE MATTER OF THE COMPLAINT OF RESIDENTS NEAR THE
VILLAGE OF JORDAN, ONONDAGA COUNTY, v. NEW YORK
TELEPHONE COMPANY, AS TO INCREASE IN RATES FOR
TELEPHONE SERVICE.

Case No. 3754.

Decided May 26, 1914.

**Relation of Rural Multi-party Rates Applicable Beyond Base Rate Area to
Four-party Rates Applicable Within Area — Value of Service
— Service at Less Than Cost.**

Complaint of increase in rate for rural or multi-party residence service from \$15.00 to \$18.00.

It appeared that the multi-party line rate was applied beyond the base rate area and the direct and four-party line rates were applied within this area, and that the four-party line residence rate of \$15.00 had not been increased at the time that the multi-party line residence rate was increased, nor had the multi-party or four-party business rates of \$24.00 been increased in either instance. The number of rural line stations greatly exceeded the number of stations within the base rate area.

The respondent alleged that the value of the service within the base area depended almost entirely on the development of the rural lines, for which reason it was developing the rural line service, even though an inadequate return was received therefrom. It further alleged that the four-party line residence rate was too low, but had not been increased for various reasons, some of which the Commission found equally applicable to an increase in the multi-party line residence rate.

Held: That it is not contended by the respondent that its operations as a whole are conducted at a loss, and because the rural line rates are not, and under the peculiar conditions surrounding the service may not, be based upon the cost therefor, it is extremely difficult to say just what a reasonable rate may be;

That sufficient reason has not been advanced why a relation of rates should be maintained for business four-party and multi-party service and the same principle not applied to residence four-party and multi-party service.

Ordered, That the respondent put in effect a rate of \$15.00 for multi-party residence service, to remain in effect as long as the \$15.00 four-party line residence rate is maintained.*

* Editor's headnote.

OPINION AND ORDER.

This is a complaint signed by eight subscribers of respondent, directed against an increase in rate effective August 1, 1913, from \$15.00 to \$18.00 per annum, for rural or so-called multi-party line residence service. The matter came on for hearing in the city of Albany on October 6, 1913. All of the complainants but one are located on one multi-party line, the station farthest away, being about two miles from the exchange in the village of Jordan. Respondent's rates within the area affected and as applied from the exchange in Jordan, the direct and four-party rates applying within the base rate area or within a radius of three-quarters of a mile from the exchange, and the multi-party rates applying outside of the base rate area, are per year as follows:

	<i>Business Residence</i>	
Direct line	\$30 00	\$24 00
Four-party line	24 00	15 00
Multi-party line	24 00	18 00

Complainants or other rural line subscribers are not confined to the multi-party line charge, but may pay upon the basis of the four-party line service plus a mileage charge outside of the base rate area. The charges thus combined, however, might be higher than the \$18.00 multi-party line rate now in effect.

Jordan is an incorporated village located within the town of Elbridge, with a population of about 1,000. The Jordan exchange area covers the major portion of the town and also adjoining portions of the towns of Brutus, Cato and Lysander in Cayuga County and Van Buren in the county of Onondaga. The population within the exchange area is about 3,500. It seems telephone service was first furnished to these rural subscribers by an independent company, and also by the Central New York Telephone and Telegraph Company at a rate per year of \$12.00. Subsequently respondent absorbed the last named company, thus securing entrance to Jordan and increased the rate to \$15.00, applying to both four-party and multi-party line

service. Eventually the independent line was taken over by respondent, and the rural line rate was increased to \$18.00, while the village or four-party line charge was not disturbed. For the various kinds of service the number of subscribers' stations in this district are shown in the following table:

	Direct	Four-party	Multi-party
Business	5	30	13
Residence	8	107	173

The gross revenue therefrom is \$6,093 per annum. The respondent is operating within the exchange area a total of 29 multi-party lines of aggregate distance 145 miles; the maximum line distance is 9 miles and minimum 2 miles. The situation in Jordan is somewhat unusual in that the rural line stations greatly exceed the stations within the base rate area. The value of service within the village, respondent states, depends almost entirely upon the development of the rural line service, which is a reason given by it for developing service of that kind even though an inadequate return may be received. It may be quite true that the rural line service, considered by itself and at the rates generally in force, may not be profitable, but it is also true that it is of value in connection with telephone service generally, and as a means of effecting communication from points not within the local exchange area for which a revenue in addition to the flat rate or charge is received. It is not contended by respondent that its operations as a whole are conducted at a loss, and because the rural line rates are not, and under the peculiar conditions surrounding the service may not, be based upon the cost therefor, it is extremely difficult to say just what a reasonable rate may be.

Respondent also states that the \$15.00 four-party line rate within the village is too low, and that it was not raised to \$18.00 because the service is not selective ringing which is usually given in connection with a higher rate for four-party line service; that the value of the service for village intercommunication is correspondingly less than in a larger

village, and "in order to assure the integrity of the service and its value as a whole we thought it advisable to temporarily continue the \$15.00 rate in the village rather than to raise it." This is further explained by respondent to the effect that the increase of the \$15.00 village rate might result in loss of subscribers. The service on the multi-party line is also non-selective ringing, and some of the above reasons might be advanced if the four-party rate had been advanced and the multi-party line rate left at \$15.00. Primarily the value of the rural line service to the subscribers is in their ability to reach the trading centers in the village or other outside points, and the value of a means of inter-communication between themselves is a secondary consideration in the taking of telephone service as a rule. Sufficient reason has not been advanced why a relation of rates should be maintained for business four-party and multi-party services within the Jordan exchange area and the same principle not apply to the residence four-party and multi-party service. Under the circumstances it would seem that a reasonable adjustment of the matter in controversy would be the re-establishment of the former \$15.00 rate for the multi-party residence service and which should be continued in force as long as the \$15.00 rate is maintained for the four-party residence service within the village.

It is, therefore, ordered, That respondent, New York Telephone Company be, and is hereby, directed to put in force and effect on or before June 10, 1914, a rate of \$15.00 per annum for multi-party residence line service now afforded within the Jordan exchange area to complainants and others similarly situated, and that said rate shall remain in force and effect so long as the present \$15.00 four-party residence line rate within the village is maintained, the new rate to be applied, however, on bills covering the month of June.

It is further ordered, That respondent New York Telephone Company may amend its tariffs accordingly on one day's notice to the Commission and the public, and re-

In re DWIGHT H. MURRAY v. NEW YORK TELEPHONE CO.

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spondent shall file with the Commission its notice concerning acceptance and obedience of this order, under Section 23 of the Public Service Commissions Law, on or before June 5, 1914.

IN THE MATTER OF THE COMPLAINT OF DWIGHT H. MURRAY
v. NEW YORK TELEPHONE COMPANY, AS TO REFUSAL OF
COMPANY TO FURNISH PRIVATE BRANCH EXCHANGE
SERVICE.

Case No. 4205.

Decided May 26, 1914.

**Discrimination — Rate for Private Branch Exchange in Office Building —
Separate Contracts at Regular Rate with Each Tenant.**

OPINION AND ORDER.

Complainant, the owner of an office building in Syracuse devoted to the occupancy of physicians, demanded of respondent switchboard service for the entire building at flat rates. Flat rates prevail in Syracuse by individual subscribers. They do not apply generally under respondent's tariffs to hotels, clubs or apartment houses. Respondent claims that each of the tenants in this building should make a separate contract and that to enter into a contract with the owner of the building with flat rate service to all of the tenants at reduced rates would constitute discrimination in favor of the tenants as against individuals generally taking business telephone service in Syracuse. The chief aim of complainant in this case is to get service with switchboard attachment for the building in question. In accordance with suggestion made by the sitting Commissioner, the company will make its separate contract with each of the tenants giving such tenants the option of having direct outside service or of being connected with a switchboard to be placed in the building. The rate to each of these tenants will be the regular business rate of \$60.00 per year for flat rate service. The company will also install a switchboard with all necessary trunks providing two extensions for the

use of the building at a total cost to the owner of the building of \$108 per year. This arrangement has been accepted by complainant.

Ordered, That respondent New York Telephone Company be, and is hereby, directed and required to install in complainant's building, 606-608 East Genesee Street, Syracuse, N. Y., a switchboard, trunks, and two extension 'phones for complainant at a total cost not to exceed \$108 per year, and that said respondent shall also, after making its contracts with tenants in said building, run its lines from the instruments in offices of said tenants through the said switchboard for use if desired by said tenants or any of them, giving all the lines so run through the switchboard a common number but listing separately each of said tenants in its directory.

It is further ordered, That respondent New York Telephone Company may file and publish any necessary amendments to its tariffs on one day's notice.

It is further ordered, That respondent New York Telephone Company shall file with this Commission its notice concerning acceptance of this order under Section 23 of the Public Service Commissions Law within two days after receipt of a copy hereof.

IN THE MATTER OF THE APPLICATION OF THE FEDERAL TELEPHONE AND TELEGRAPH COMPANY, UNDER SECTION 101 OF THE PUBLIC SERVICE COMMISSIONS LAW, FOR AUTHORITY TO ISSUE \$500,000 PAR VALUE 7 PER CENT. CUMULATIVE PREFERRED STOCK.

Case No. 4270.

Decided June 9, 1914.

Issuance of Capital Stock to Defray Operating Expenses — Provision of Reserve for Replacements — Segregation of Property Not Used in Public Service — Valuation of Property.

The applicant having entered into a stipulation agreeing to make no further applications for the issuance of securities on account of expenditures made prior to January 1, 1914; to eliminate from its fixed capital accounts all investments in property not used in the public service; to

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transfer \$831,565.56 from its "Corporate Surplus" to a "Reserve for Renewals and Replacements" to which charges should be made only for the maintenance of the permanent investment and after application to the Commission; to make an inventory and appraisal of its property itemized and classified as between property used in public service and property not so used and as between municipalities and tax districts, the basis of the appraisal to be original cost so far as possible, the results not to be conclusive upon any party in future proceedings as to rates or transfer of property, and any excess over the value already shown on the books to be debited to "Intangible Capital"; the Commission authorized the issuance of \$500,000 of 7 per cent. cumulative capital stock at par, the proceeds to be used for the payment of current liabilities for operating expenses in the amount of \$320,089.75 and for the reimbursement of the applicant's treasury for expenditures from income for capital purposes in the amount of \$180,000.*

ORDER.

There having been filed herein the following stipulation:

STATE OF NEW YORK, }
COUNTY OF ERIE, } ss.:

The Federal Telephone and Telegraph Company, a domestic corporation, hereby stipulates and agrees, with the Public Service Commission, Second District, State of New York, in connection with two certain proceedings now pending before the Commission, the first one of which was instituted December 31, 1911, and amended by supplemental petition filed the nineteenth day of March 1914, (the same being recorded in the files of the Commission as Case 2703) and the second having been instituted on the twenty-ninth day of April, 1914, (the same being recorded in the files of the Commission as Case 4270):

1. That said Case 2703 may be closed upon the records of the Commission, and in connection therewith the petition in Case 4270 shall be so amended and modified that the relief asked for shall be for an authorization of \$500,000 par value of 7 per cent. cumulative preferred capital stock;

2. That such portion of such stock as is authorized by the Commission for reimbursement of the treasury of the company or for the funding of current liabilities shall be in full for all claims of said company for such purposes in connection with its affairs or transactions prior to the first day of January, 1914, except as to a certain net advance of \$25,000 which has been made to the Automatic Electric Company in connection with certain construction work to cover which there is now an application pending before the Commission and that no further application shall

* Editor's headnote.

be made for authority to issue stocks, bonds, notes or other evidences of indebtedness having a period of maturity of more than one year from the date thereof on account of expenditures prior to January 1, 1914;

3. That it shall cause an analysis to be made of the charges on its books to the accounts for "Fixed Capital installed prior to January 1, 1912," and "Fixed Capital installed since December 31, 1911," and "Construction Work in Progress," as reported to the Commission in its annual report for the year ended December 31, 1913, and will eliminate therefrom in a manner and for amounts satisfactory to and approved by the Commission all items charged thereto, such as stocks, bonds, or other securities, or property owned by the company but not devoted to the public service, which items, under the provisions of the Uniform System of Accounts for Telephone Corporations are required to be charged to other prescribed accounts;

4. That it will charge to the account "Corporate Surplus Unappropriated" the sum of \$831,565.56 and will credit such amount to the general account "Appropriated Surplus" under the sub-account "Other Reserves from Income or Surplus," the name of such reserve to be "Reserve for Renewals and Replacements" and that no charges will be made to such latter account except such as are for the maintenance of the permanent investment of the company devoted to the public service, and such charges will not then be made unless and until an application shall be made to the Commission for permission to make such charge and such permission shall have been granted in writing;

5. That it will immediately begin the preparation of an inventory and appraisal of its tangible property and will continue the preparation of the same until it is completed and such inventory and appraisal shall be filed with the Commission which shall not be later than thirty-first day of December, 1914. Such inventory and appraisal will be as of January 1, 1914. The property will be classified as between tangible property not used in the public service chargeable to "Investments" and property so used chargeable to "Fixed Capital." The property chargeable to "Fixed Capital" will be classified as between appropriate accounts for "Fixed Capital installed since December 31, 1911"—No. 207, "Right of Way," to No. 265, "General Tools and Implements," inclusive. It will be in such form and detail as to enable the identification of the various items. In addition to being classified by accounts it will be shown separately by municipalities and tax districts.

The basis of the appraisement of the items so inventoried will be, so far as possible, the original cost new of such property to the Federal Telephone and Telegraph Company, its predecessors, or the operating telephone corporations from which such property was acquired. In filing such inventory and appraisal and subsequently recording the same in its accounts when it has been approved by the Commission, it is expressly understood that such inventory is exclusively for purposes of correct

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accounting in connection with retirements, renewals and replacements, depreciation, and capitalization, and while both prices and quantities will be set forth therein as accurately as possible, it shall not be conclusive upon the company or the Public Service Commission, Second District, State of New York, in connection with any future proceeding as to rates or transfer of property, nor shall it be conclusive upon other parties to such future proceeding. It is further understood that the company may set forth this reservation in its reports to the Commission.

When such appraisal is completed and has been approved by the Commission for purposes hereinbefore set forth, the results thereof will be recorded in the books of the company. If the total of such inventory and appraisal of the tangible property chargeable to "Fixed Capital" is less than the aggregate which was charged on the books of the company December 31, 1913, to the accounts "Fixed Capital installed prior to January 1, 1912," "Fixed Capital installed since December 31, 1911," and "Construction Work in Progress" (making proper reductions for the amounts to be eliminated and charged to "Investments" or other prescribed accounts as specified in Subdivision 3 hereof), the difference between the total of such inventory and appraisal and the sum of such accounts will be charged as may be desired by the company to Accounts No. 201, "Organization," to No. 204, "Other Intangible Capital," inclusive, as set forth in the Uniform System of Accounts for Telephone Corporations.

FEDERAL TELEPHONE AND TELEGRAPH COMPANY,

By (Signed) BERT G. HUBBELL,

President.

(Signed) RAYMOND BISSELL,

Secretary.

(Dated)

(SEAL)

STATE OF NEW YORK, }
COUNTY OF ERIE, } ss.:

On the ninth day of June, 1914, before me personally came Bert G. Hubbell and Raymond Bissell, to me known, who being by me duly sworn, did depose and say that they were the president and secretary, respectively, of the Federal Telephone and Telegraph Company, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; and acknowledged that they signed the foregoing stipulation on behalf of and as president and secretary of such corporation.

H. A. GLOYD,

Notary Public.

(NOTARIAL SEAL)

And a hearing having been had herein on the nineteenth day of May, 1914, at which the petitioner appeared by its president, and other proceedings having been had, all of which finally resulting in the filing of the foregoing stipulation; now, therefore,

Ordered as follows:

1. That the Federal Telephone and Telegraph Company be, and it hereby is, authorized, pursuant to the provisions of Section 101 of the Public Service Commissions Law, to issue \$500,000 par value of its 7 per cent. cumulative preferred capital stock which shall be sold for not less than par value thereof;

2. That said stock of the par value of \$500,000 so authorized, or the proceeds thereof of like amount, shall be used solely and exclusively for the following purposes:

a. For the payment and discharge of the following current liabilities outstanding December 31, 1913:

Bills payable, as detailed in Schedule A filed herein...	\$136,266 76
Audited vouchers and wages unpaid.....	10,531 73
Consolidated Telephone Co.:	
Advance account	\$49,389 64
Stock account	5,202 00

54,591 64

Accounts payable, as detailed in Schedule B filed herein.	101,384 93
Heat, light, water and power accounts unpaid.....	886 88
Livery accounts due and unpaid.....	4,761 15
E. C. Bucher	1,666 66
Payrolls for month of December, 1913, unpaid December 31, 1913 (so far as applicable).....	10,000 00

\$320,089 75

b. For the reimbursement of its treasury in full for expenditures from income to January 1, 1914.....

180,000 00

TOTAL \$500,089 75

UNPROVIDED FOR \$89 75

Provided that, in so far as such liabilities hereinbefore set forth have been paid and liquidated from other cash in the treasury of the company, of which satisfactory proof shall

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be submitted to the Commission, the proceeds of the capital stock hereinbefore authorized shall be applied upon the payment of other accounts payable, due and owing when the proceeds of the capital stock herein authorized shall be available, it being the intention that the proceeds of \$320,000 par value of the stock hereinbefore authorized shall be devoted exclusively to the payment of the debts of the Federal Telephone and Telegraph Company and only \$180,000 shall be used for the reimbursement of the treasury of the petitioner;

3. That the company shall for each three months' period ending March 31, June 30, September 30 and December 31, file, not more than fifteen days from the end of such periods, respectively, a verified report showing:

a. What stock has been sold, exchanged, or otherwise disposed of, during such periods in accordance with the authority contained herein, and the date of such sale or disposition;

b. To whom such stock was sold;

c. What proceeds were realized from such sale;

d. Any other terms and conditions of such sale;

e. The amount expended in reasonable detail of the proceeds for the purposes specified herein during such periods, and stating to what account or accounts such expenditures have been charged.

Such reports shall continue to be filed until all of said securities shall have been sold or disposed of in accordance with the authority contained herein, and if during any period no securities were sold or disposed of, the report shall set forth such fact;

4. That the authority contained in this order to issue capital stock is upon the express condition that the petitioner accepts and complies in good faith with the provisions hereof and before any securities are issued pursuant hereto and within ten days of the service hereof the said company shall file with the Commission a satisfactory stipulation duly authorized by its board of directors accepting this order with all its terms and conditions and ratifying

the stipulation verified by its president and secretary on the ninth day of June, 1914, recited in the preamble hereof; and this order shall be void and of no force or effect until such stipulation shall have been filed as required herein;

5. That this proceeding shall be, and hereby is, continued until such stipulation recited in the preamble hereof shall have been fully satisfied and an order entered accordingly.

Finally, it is determined and stated, That in the opinion of the Commission the money to be procured by the issue of capital stock herein authorized is reasonably required for the purposes specified in this order, and that such purposes are not in whole or in part reasonably chargeable to "Operating Expenses" or to "Income," except as otherwise permitted by this order, the payment of \$320,000 of outstanding debts.

IN THE MATTER OF THE COMPLAINT OF WEBSTER GRANGE
No. 436, PATRONS OF HUSBANDRY AND BUSINESS MEN'S
ASSOCIATION OF WEBSTER *v.* NEW YORK TELEPHONE
COMPANY.

Case No. 2030.

Dismissed June 24, 1914.

**Rates for Rural Line Service — Toll Rates for Rural Lines — Overloading of
Rural Lines — Improvement of Unsatisfactory Service.**

The respondent's rate at its Webster exchange for rural multi-party line service, business or residence, three to nine on a line was \$15.00 per year. For toll messages a charge of 5 cents for two number calls and 10 cents for particular party calls was made where the distance was less than eight miles and 10 cents and 15 cents respectively for distances from eight to fifteen miles.

The Commission found that the \$15.00 rate was reasonable and pointed out that the \$12.00 rate for similar service out of the Fairport, Pittsford and Charlotte exchanges was doubtless governed by competition. It also found that the tolls charged were in line with the company's practice.

The service had been unsatisfactory in several respects and the Commission had made recommendations as to its improvement. The company

had re-associated its rural line stations, reducing the number of stations per line, had changed the indirect routing of handling orders for installations, disconnections, removals, etc., and had installed power ringing machines and no complaint as to service had been received during the past year.

Complaint dismissed.*

OPINION AND ORDER.

This complaint attacks the reasonableness of an increase in rate for rural or multi-party line service connected with the Webster, Monroe County, exchange, from \$12.00 to \$15.00 per annum, and the reasonableness of a toll rate of 10 cents applied between subscribers' stations on the rural lines and Rochester. Complaint is also made that respondent company has installed more than seven stations on the Webster rural lines. It is claimed that the increased yearly rate and the installation of more than seven stations on the lines are in violation of a contract or agreement entered into between patrons of the Grange and the predecessor of respondent, and that subscribers in Fairport enjoy a 5-cent toll rate to Rochester. Respondent states no record of any such contract or agreement can be found, and no documentary proof in support of complainant's contention has been presented to the Commission.

Webster is an incorporated village, located about ten miles northeast of Rochester, and telephone service apparently is afforded by respondent alone. It has a population of about 1,100. Connected with the Webster central office are 587 stations, of which 338 are on the rural lines. The base rate area extends within a radius of three-quarters of a mile of the central office and within the base rate area the following charges per annum are made:

Business, direct	\$36 00
Business two-party	24 00
Residence, direct	24 00
Residence, four-party	15 00

* Editor's headnote.

Rural rates within the exchange area, which includes the unincorporated villages of Forest Lawn, Union Hill and West Webster, are as follows:

Business	\$15 00
Residence	15 00

The regulating statute conferring jurisdiction upon the Commission as to telephone corporations became effective September 1, 1910, and tariff authority for all of the above rates was filed with the Commission during August, 1910. The rates have not since been changed. It does appear, however, that when the service was afforded by the Bell Telephone Company of Buffalo the rural line rate was \$12.00 per annum, and that this rate was increased to \$15.00 about January 1, 1909.

The rural lines, formerly fifty-five in number, radiate from the central office, and the maximum distance is one line of eight miles upon which seven stations are served. The maximum number of stations formerly was twelve, located on a line about five and one-half miles long, one line about four and one-half miles in length served ten stations, and another line three miles in length served eleven stations. On all of the other lines the number of stations ran from one to nine. The average number of stations on all the lines was 6.14.

The general practice followed by the respondent in assessing toll charges is to collect a rate of 5 cents for a two-number call and 10 cents for a particular party call for distances up to eight miles, 10 cents and 15 cents for distances from eight to sixteen miles, and as applied from exchange to exchange. The 10-cent and 15-cent toll rate between Webster and Rochester is in line with this practice. At the hearing it appeared that exception had been made in favor of toll service between Fairport and Rochester, a distance of nine miles, for which a charge of 5 cents had been in force. On July 1, 1913, this charge was cancelled, and since that date toll service between Fairport and Rochester has been upon the basis of 10 cents for two-number calls and 15 cents for particular party calls. It also appears

that previous to July 1, 1913, the toll charge between Webster and Rochester was a straight 10-cent rate, but since that date 10 cents has been charged for two number calls and 15 cents for particular party calls. A comparison of toll charges now applied between points in the vicinity of Rochester is shown in the following table; which are in conformity with the practice of respondent described:

Between	Miles	Two number rate	Particular party rate
Rochester and Webster	10	10 cents	15 cents
Rochester and Fairport.....	9	10 cents	15 cents
Rochester and Pittsford	6	5 cents	10 cents
Rochester and Spencerport.....	10	10 cents	15 cents
Rochester and Charlotte.....	7	5 cents	.....

At the hearing much dissatisfaction was manifested by subscribers as to service which was the subject of thorough investigation by the Commission subsequent to the hearing. The investigation developed that serious delay had occurred in correcting line trouble, and recommendations for improving the service were made. The rural line stations have since been re-associated and one additional line installed. The maximum number of stations on a line is now nine on two lines, twelve lines have eight stations, fifteen lines have seven stations, and the remaining twenty-seven lines have stations ranging from three to six in number. The indirect routing of handling orders for installations, disconnections, removals, etc., has been changed, power ringing machines have been installed, and no complaint as to service has been received by the Commission for over a year.

The evidence as to the alleged unreasonableness of the \$15.00 yearly charge for multi-party line service was based mainly upon contracts or agreements said to have been entered into between subscribers and respondent's predecessor. No satisfactory proof to this effect was presented. It is true that rural line service is afforded by respondent from the Fairport, Pittsford and Charlotte exchanges for \$12.00 per annum, but this charge is doubtless governed by competition at said last named places, and respondent

declares it is unremunerative. The Commission can find upon the record no sufficient reason to hold that the multi-party line rate of \$15.00 per annum, as applied from the Webster exchange, is unjust or unreasonable. Complaint as to the alleged unreasonableness of the 10-cent toll charge between Webster and Rochester was based upon the 5-cent rate for some time enjoyed by Fairport subscribers. Such discrimination has been removed, as hereinabove described, by increase in rate to Fairport subscribers. The complaint as to over crowding of the rural lines has been reasonably met by respondent in decreasing the number of line stations by the installation of an additional line and in re-associating the stations.

After due consideration, therefore,

It is ordered, That the complaint of Webster Grange No. 436, Patrons of Husbandry and Business Men's Association of Webster against New York Telephone Company be, and is hereby, closed upon the records of the Commission.

OHIO.

The Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE CHESTER TELEPHONE COMPANY FOR A CERTIFICATE OF PUBLIC NECESSITY AND CONVENIENCE.

No. 204.

Dismissed June 12, 1914.

Certificate of Public Convenience and Necessity — Extension of Lines into Unoccupied Territory — Approval of Commission Not Required.

ORDER.

This case came on to be heard upon the pleadings and the evidence, and it appearing that the territory now proposed to be served by The Chester Telephone Company will not be served by any other company, the Commission finds that said The Chester Telephone Company is not required to apply to this Commission for a certificate of public convenience.

It is, therefore, ordered, That the application of said The Chester Telephone Company be, and the same is hereby, dismissed.

Dated at Columbus, Ohio, this twelfth day of June, 1914.

OREGON.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE NEWBERG TELEPHONE COMPANY FOR AUTHORITY TO INCREASE CERTAIN RATES.

No. U-F—80.

Decided May 23, 1914.

Insufficient Revenue—Increase in Rates Necessitated by Voluntary and Involuntary Increases in Wages—Return on Investment—Value of Service to Patrons—Charges for Changing Location of Telephones.

Upon application for authority to increase rates, the Commission found that on account of increases in wages, both voluntary and involuntary, the latter required by the Industrial Welfare Commission, the net return on the investment under the existing rates would amount to only 1.4 per cent. which the Commission held to be insufficient.

The Commission fixed certain increased rates which it found to be reasonable and not in excess of the value of the service to patrons. Changes were made in the charges for moving telephones from one location to another.*

FINDINGS AND ORDER.

On this twenty-third day of May, 1914, this matter comes on for final determination, having been heretofore fully submitted to the Commission upon the application of the Newberg Telephone Company, brought under the provisions of Section 77 of Chapter 279 of the General Laws of Oregon for the year 1911, for authority to increase certain of its rates over those carried by it January 1, 1911. Notice of the hearing was served upon the city of Newberg and the Newberg Commercial Club.

APPEARANCES:

Clarence Butt, attorney, and *E. E. Goff*, secretary and manager, for the Newberg Telephone Company.

* Editor's headnote.

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No other appearances were entered.

It was stipulated that, besides the record made before the Commission, there should be considered the rate schedules of other telephone companies in communities generally similar to Newberg. From the record and from such examination of the tariffs filed with the Commission, it is now found and determined:

1. Applicant, Newberg Telephone Company, a corporation of the State of Oregon, owns and manages a telephone system in the city of Newberg and vicinity, as a public utility. Since the first day of January, 1911, and prior to the taking effect of the public utilities law, it had increased its effective charges. The rates now in effect, and those which the application requests to be authorized, are subsequently set out herein.

2. The amount of money actually invested in the plant of the applicant, without taking into account any depreciation, is approximately \$19,750. Owing to comparatively recent reconstruction of the plant, the accrued depreciation is comparatively small.

3. The revenues of the applicant from operation during the calendar year 1913, amounted to \$8,294.42; and during the same period the operating expenses and taxes amounted to \$5,907.37. The net revenue from operation amounted to \$2,387.05, which sum is available for depreciation, the payment of interest on the indebtedness of the company, and for return upon the investment. The depreciation upon the plant during the year the Commission finds to have been approximately \$1,150, and the return from operation during the year amounted to a sum equal to 6.3 per cent. of the investment in the plant.

4. Expenses in the future will exceed those in the past, due to increases in wages, both the result of voluntary action on the part of the company, and involuntary increases brought about by the orders of the Industrial Welfare Commission of the State of Oregon, to an amount approximating \$960 per annum. With rates, traffic and other expenses remaining as at present, the net revenue from operations under such changed conditions, lessened

by depreciation, would yield a net return of \$277.05, equivalent to 1.4 per cent. upon the investment in the property. Such rate of return is less than the usual return expected and received by investments generally in the vicinity, either generally or of a similar character to that of applicant.

5. The rates set out in the last column below, under the heading "Rates found to be reasonable," are fixed and determined as reasonable rates for the service performed by the applicant, which will yield it a reasonable return upon its investment and for the service performed by it, and which will not exceed the value of the service to the patrons of applicant.

	<i>Present rates</i>	<i>Rates ap- plied for (per month)</i>	<i>Rates found to be reasonable</i>
<i>Within the city of Newberg:</i>			
Business: Main or one-party.....	\$2 00	\$2 50	\$2 25
Two-party	1 50	2 00	1 75
Residence: Main or one-party.....	1 50	2 00	1 75
Two-party	1 25	1 50	1 50
Four-party	1 00	1 25	1 20
<i>Suburban service, central energy:</i>			
Within 1 mile limit.....		1 25	1 25
Within 1½ mile limit.....	1 25		
Within 2 mile limit.....		1 50	1 50
Within 3 mile limit.....	1 50	1 75	1 75
Within 4 mile limit.....		2 00	2 00
<i>Country party lines, owned and maintained by cus- tomers, connected at city limits:</i>			
<i>Central energy:</i>			
Per subscriber	65	85	65
Per year, if paid in two installments, six months in advance.....	6 60	9 00	7 00
Minimum per line, per month.....	2 65	3 00	2 65
<i>Magneto energy:</i>			
Per subscriber	50	60	50
Per year, if paid in two installments, six months in advance.....	5 00	6 00	5 00
Minimum per line, per month.....	2 50	3 00	2 50
Party line No. 6, per subscriber.....		1 25	1 25

It is proposed to increase the charge for moving telephones from one building to another more often than once a year from \$1.00 to \$2.50; and to leave removal charge the

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same as at present: \$1.00 for removals from one room to another in the same building. It is proposed to qualify the removal charges to the effect that "if new locations are already wired but a part of the above charge will be made." A reasonable regulation in this regard is that, "If new locations are already wired, a charge equal to the cost of the change will be made."

ORDER.

It is, therefore, ordered, considered and determined, That the applicant be authorized to charge and collect the rates herein found to be reasonable, in lieu of its present rates. This order shall become effective as to individual patrons beginning with the current period or month next ensuing the service of a copy of this order, as their contracts may run, but shall not affect service for which payment in advance may have been made at the date of the entry of these findings and this order.

Dated at Salem, Oregon, this twenty-third day of May, 1914.

PASS CREEK RURAL TELEPHONE COMPANY v. THE PACIFIC
TELEPHONE AND TELEGRAPH COMPANY.

File U-F—81.

Decided May 29, 1914.

**Discontinuance of Physical Connection Occasioned by Dispute as to Matter
over which Commission has no Jurisdiction — Re-establishment of Connection Required.**

The complainant was a rural telephone company which had purchased its line from The Pacific States Telephone and Telegraph Company of which the defendant, The Pacific Telephone and Telegraph Company, was the lessee. The line ran for some distance on the poles of the Postal Telegraph-Cable Company. The complainant's connection with the defendant's exchange had been severed by the defendant on account of a dispute as to the complainant's liability for contact rental due to the Postal Telegraph-Cable Company under a contract between The Pacific States Telephone and Telegraph Company and the Postal company.

Held: That the Commission is without jurisdiction to pass upon the liability of the parties under the contract;

That the defendant's refusal to afford connection constitutes an unreasonable and inadequate service.

Ordered, That the defendant re-establish the connection within five days and thereafter afford service to the complainant without discrimination.*

FINDINGS AND ORDER.

This is a complaint the object of which is to compel the reconnection of a rural telephone line of the plaintiff with defendant's Cottage Grove exchange, and the resumption of service. The matter came on in regular manner to be heard upon the complaint and answer and the testimony taken and proofs offered.

APPEARANCES:

For the plaintiff, *H. J. Shinn*.

For the defendant, *Omar C. Spencer*.

The Commission, now being fully advised, finds and determines:

1. Plaintiff is a copartnership which has complied with the laws of the State and does business under the assumed name above given. Its members own and operate a rural telephone line running out of Cottage Grove eleven miles south. The line formerly belonged to The Pacific States Telephone and Telegraph Company, and was acquired by plaintiff from that company by bill of sale dated November 29, 1912. At that time the line ran for a considerable distance along poles of the Postal Telegraph-Cable Company, under a contract arrangement between the Pacific States and Postal companies, which contemplated the payment to the Postal company of a certain contact rental per pole for each year. By its terms the contract bound the successors of the respective parties. The defendant is the lessee of the Pacific States company, engaged in the operation of its plant, and has assumed its obligations in regard to the pole rental.

2. A dispute arose between the defendant and plaintiff as to the liability of the plaintiff for the pole contact rental

* Editor's headnote.

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due the Postal company for the poles occupied by the line sold the plaintiff, after the delivery of the bill of sale to it. Defendant has paid the Postal company \$101.20 on this account, for which plaintiff declines to make reimbursement.

3. The telephone line of plaintiff was formerly connected with the exchange of the defendant in Cottage Grove, and the members of the plaintiff each paid the rental called for by the defendant's tariffs for rural subscribers. Because of the dispute as to the liability for the payment of the pole rental, defendant disconnected the plaintiff's line and has since refused its members service, although in the complaint herein plaintiff offers for its members to pay the regular tariff rates. Defendant sets up the fact it is held on account of the pole rental, and that plaintiff declines to take any action to relieve it from liability in the future or reimburse it for the previous payments, as a defense.

4. The Commission is without jurisdiction to pass upon the liability of the parties under the Postal company's contract. Appropriate legal proceedings by the defendant against the plaintiff will determine the question. The refusal of the defendant to afford connection and service with the plaintiff and its members because of the defense set up constitutes an unreasonable and inadequate service. Five days is a reasonable time within which the connection should be restored and service resumed.

ORDER.

It is, therefore, ordered, considered and determined, That defendant shall, within five days from and after the service of a copy of this order upon it, reconnect the telephone line of the plaintiff with its Cottage Grove exchange, and shall thereafter afford service to the plaintiff and its members, upon equal terms with other subscribers, and subject to the regulations and rules, and at the rates included in the effective schedules of the defendant.

Dated at Salem, Oregon, this twenty-ninth day of May, 1914.

PASS CREEK RURAL TELEPHONE COMPANY *v.* THE PACIFIC
TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION.

No. U-F—81.

Dated June 20, 1914.

Motion for Modification of Previous Order Denied.

ORDER.

On this twentieth day of June, 1914, this matter comes on before the Commission upon the motion of the defendant, The Pacific Telephone and Telegraph Company, for modification of the order entered herein on May 29, 1914, to the effect that the plaintiff, and its members, be required to either pay in advance the maintenance charges upon their line, required by reason of the line of the plaintiffs being located in part upon the Postal Telegraph-Cable Company's poles, for the year 1914, and thereafter, or that the plaintiff, and its members, be required to guarantee the payment or adjustment of such maintenance charge for the future.

The order of the Commission entered as above set forth was that the defendant should afford service to the plaintiff, and its members, upon equal terms with other subscribers, and subject to the regulations and rules, and at the rates included in the effective schedules of the defendant. These schedules require, among other things, the maintenance of the line by the subscriber and the advance payment of the rental.

The motion is denied.

PENNSYLVANIA.

The Public Service Commission.

SPRING BROOK LUMBER COMPANY v. THE BELL TELEPHONE COMPANY OF PENNSYLVANIA.

No. 1039.

Decided April 9, 1914.

Approval of Establishment of New Telephone Exchange and of Rates and Service in Connection Therewith.

REPORT OF THE COMMISSION.

WRIGHT, Commissioner:

In this case the Spring Brook Lumber Company, on February 18, 1913, filed with the Pennsylvania State Railroad Commission a complaint against the Bell Telephone Company, alleging that rates for service between Scranton and Moosic, where the complainant is located, were unfair and discriminatory, and, later, numerous residents of Moosic joined in the complaint.

The Bell Telephone Company answered the complaint, admitting the facts as set forth and alleging that owing to the growth of the telephone business it had become necessary to include the complainant in a new local exchange in place of allowing them to remain, as they had previously been, in the Scranton exchange. It also denied that the rates charged under the new arrangement were unfair or unjust and submitted the question of the rates and the advisability of establishing the new exchange to the judgment of the Commission.

On the issue thus joined, a hearing was held on June 19, 1913, and after this hearing the Commission caused an investigation of the situation to be made by its representative.

From this investigation and the testimony produced, it appears that the locating of the new telephone exchange, including the town of Moosic, was done by the telephone company after a careful consideration of the needs of the

district and with a view to improving the service rendered to its patrons in that vicinity.

It appears that the location and regulations adopted are in accord with the best telephone practice, and that the action of the telephone company in this case is fully justified by the circumstances.

The Commission is, therefore, of the opinion that the evidence produced does not show that the rates and practices of the telephone company in this case are unfair, unreasonable or unjust, and for this reason the complaint is hereby dismissed and the case closed.

ORDER.

And now, to wit, April 9, 1914, the finding, determination and order made by Commissioner Wright dismissing the complaint in this proceeding is ratified and confirmed and made the order of this Commission.

IN THE MATTER OF DISCRIMINATIONS PRACTICED BY THE ECONOMY TELEPHONE STOCK COMPANY.

Dated June 3, 1914.

**Elimination of Discrimination between Stockholders and Non-Stockholders
— Discontinuance of Free Service to Hotels and Railroad Stations.**

ORDER.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

Now, to wit, June 3, 1914,

It is ordered, That the Economy Telephone Stock Company, on and after the receipt of this order, make no difference in the rates which it charges stockholding and non-stockholding subscribers or users of its service, and that the practice of furnishing and maintaining telephone service free at hotels and railway stations be discontinued.

SOUTH CAROLINA.

The Railroad Commission.

IN THE MATTER OF AGREEMENT DATED MARCH 17, 1914, BETWEEN THE SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY AND THE CITY OF DARLINGTON, SOUTH CAROLINA, WITH REFERENCE TO INCREASING DARLINGTON LOCAL EXCHANGE TELEPHONE RATES.

Decided May 7, 1914.

Agreement between Company and City as to Rates—Increase in Rates upon Improvement of Service — Further Increase in Rates upon Increase in Size of Exchange.

This was an application for the approval of an agreement entered into between the city of Darlington and the Southern Bell Telephone and Telegraph Company, providing that upon the installation by the company of a common battery central energy telephone system in place of the existing system, and thereafter until 2,250 stations should have been connected with the local exchange, the company should be entitled to charge certain rates* fixed by the agreement, and that after 2,250 stations should have been connected, the rates charged should not exceed those charged by the company for the same class of service under similar conditions in other localities of similar size in the State of South Carolina. A majority of the subscribers assented to the proposed rates.

The Commission issued an order ratifying the agreement without prejudice.†

ORDER.

After considering the agreement between the Southern Bell Telephone and Telegraph Company, dated March 17, 1914, and the city of Darlington, South Carolina, with ref-

* The rates specified follow:

Unlimited special line business station, per month.....	\$4 00
Unlimited duplex line business station, per month.....	3 50
Unlimited special line residence station, per month.....	2 50
Unlimited duplex line residence station, per month.....	2 00

Discount of 50 cents per month for advance payment on or before the tenth day of each month until 750 stations have been connected with the Darlington exchange. Thereafter no discount shall be given but payment in advance shall continue to be demanded.

† Editor's note prepared from the record.

erence to the installing by that company of a common battery central energy telephone system in Darlington, in lieu of the present system now being operated there, and the payment by the Darlington telephone subscribers of the local exchange telephone rates at that point, upon the terms and conditions set forth in said agreement, a copy of which agreement is on file in the office of the Commission; and after considering the resolution of the Mayor and Council of Darlington, dated March 17, 1914, requesting this Commission to approve the said agreement and to authorize said telephone company to charge the schedule of rates therein mentioned, upon the terms and conditions therein set forth, a copy of which resolution is on file in this office; and upon considering the original agreement with said company by a large majority of the telephone subscribers of said company in Darlington, South Carolina, agreeing to the schedule of rates and terms and conditions set forth in said agreement between said company and said city of Darlington, said agreement by said subscribers being on file in this office,

It is considered, ordered and adjudged by The Railroad Commission of South Carolina, That the above agreement is confirmed, ratified and approved, and the Southern Bell Telephone and Telegraph Company is hereby authorized, from and after the expiration of thirty days after the completion of the improvements provided for in said agreement, to charge the schedule of rates for local exchange service in Darlington, South Carolina, as and upon the terms and conditions therein set forth, reference being hereby made to said agreement showing said schedule of rates and terms and conditions upon which they are to be charged.

This agreement is confirmed by The Railroad Commission without prejudice.

Columbia, South Carolina, May 7, 1914.

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IN THE MATTER OF AGREEMENT DATED NOVEMBER 18, 1913,
BETWEEN THE SOUTHERN BELL TELEPHONE AND TELE-
GRAPH COMPANY AND THE TOWN OF LITTLE ROCK,
SOUTH CAROLINA, WITH REFERENCE TO CONSTRUCTING
A TELEPHONE EXCHANGE AT LITTLE ROCK AND RATES
TO BE CHARGED FOR LOCAL EXCHANGE TELEPHONE
SERVICE.

Decided May 7, 1914.

**Agreement between Company and Town as to Rates upon Establishment
of Exchange—Increases in Rates upon Increases in Size of
Exchange—Free and Reduced Rate Service to Town.**

This was an application for approval of an agreement entered into between the town of Little Rock and the Southern Bell Telephone and Telegraph Company, providing that upon the establishment by the company of a local exchange at Little Rock, and thereafter until 100 stations should have been connected with the local exchange, the company should be entitled to charge certain rates* fixed by the agreement, and that after 100 stations should have been connected and until 300 stations should have been connected, the company should be entitled to charge certain increased rates† fixed by the agreement, and that after 300 stations should have been connected, the rates charged should not exceed those charged by the company for the same class of service under similar conditions in other localities of similar size in the State of South Carolina. It was further provided that certain free and reduced rate service should be rendered to the town. All of the prospective subscribers assented to the rates proposed.

The Commission issued an order ratifying the agreement without prejudice.‡

* The rates specified follow:

Unlimited special line business station, per month.....	\$2 50
Unlimited duplex line business station, per month.....	2 00
Unlimited party line business station, per month.....	2 00
Unlimited special line residence station, per month.....	2 00
Unlimited duplex line residence station, per month.....	1 50
Unlimited party line residence station, per month.....	1 50

† The rates specified follow:

Unlimited special line business station, per month.....	\$3 00
Unlimited duplex line business station, per month.....	2 50
Unlimited party line business station, per month.....	2 50
Unlimited special line residence station, per month.....	2 00
Unlimited duplex line residence station, per month.....	1 50
Unlimited party line residence station, per month.....	1 50

‡ Editor's note prepared from the record.

ORDER.

After considering the agreement between the Southern Bell Telephone and Telegraph Company, dated November 18, 1913, and the town of Little Rock, South Carolina, with reference to the construction of a telephone exchange in the town of Little Rock, South Carolina, and the payment by the Little Rock telephone subscribers of the local exchange telephone rates at that point, upon the terms and conditions set forth in said agreement, a copy of which agreement is on file in the office of the Commission; and after considering the resolution of the Mayor and Council of Little Rock, dated April 8, 1914, requesting this Commission to approve the said agreement and to authorize said telephone company to charge the schedule of rates therein mentioned, upon the terms and conditions set forth therein, a copy of which resolution is on file in this office; and upon considering the original agreement with said company by all of the proposed telephone subscribers of said company in Little Rock, South Carolina, agreeing to the schedule of rates and terms and conditions set forth in said agreement between said town of Little Rock and [Southern Bell Telephone and Telegraph Company] said agreement by said subscribers being on file in this office,

It is considered, ordered and adjudged, by The Railroad Commission of South Carolina, That the above agreement is confirmed, ratified and approved, and the Southern Bell Telephone and Telegraph Company is hereby authorized, from and after the date of the completion of the exchange in the town of Little Rock, provided for in said agreement, to charge the schedule of rates for local exchange service in Little Rock, South Carolina, as and upon the terms and conditions therein set forth, reference being hereby made to said agreement showing said schedule of rates and terms and conditions upon which they are to be charged.

This agreement is confirmed by The Railroad Commission without prejudice.

Columbia, South Carolina, May 7, 1914.

SOUTH DAKOTA.

Board of Railroad Commissioners.

IN THE MATTER OF THE TRANSFER OF MESSAGES FROM A TELEPHONE ON ONE LINE TO A TELEPHONE ON ANOTHER.

Dated May 3, 1913.

Transfer of Messages from One Line to Another without Aid of Switch.

OPINION OF COUNSEL FOR THE BOARD.*

I have before me the correspondence from C. W. Stanley, Esq., of Dolton, S. D., with reference to the transferring of messages from one telephone line to another. From the correspondence, I gather that this Mr. Stanley is a subscriber to both telephone lines, and that he has been making a practice of receiving messages over one telephone and delivering the messages over the other telephone, and he wants to know if this is in violation of the statute. It is, in fact, the switching of a message by receiving it at one instrument and then stepping over to the other instrument and delivering it. It is a practice which should be discouraged, but there is no express provision in the statute making it unlawful to do this. Under the provisions of our statute, telephone companies cannot be compelled to connect except at exchange or station points, yet this does not prohibit telephone companies from, by mutual agreement, installing a switch for the switching of messages between lines. I am enclosing to Mr. Stanley a copy of the laws, and have marked the provisions relating to telephones. I return all the papers to you herewith.

* Opinion contained in a letter addressed to the Board by its attorney, P. W. Dougherty, under date of May 3, 1913.

In its Pamphlet No. 1, issued August 1, 1912, the Board states that the opinions of its counsel will govern in the various subjects to which they relate unless reconsidered by the Board or reversed by court procedure.—Ed.

IN THE MATTER OF THE INVESTIGATION INTO THE JOINT TOLL
RATES FROM POINTS ON THE LINES OF THE DAKOTA CEN-
TRAL TELEPHONE COMPANY TO THE LINES OF THE FARM-
ERS' MUTUAL TELEPHONE COMPANY.

Complaint F—79.

Decided May 23, 1914.

**Joint Toll Rates—Fee for Switching Messages from One Toll Line to
Another through an Intermediate Exchange—Absorption of Switch-
ing Fee—Rate for Toll Messages Transmitted Thirty-six
Miles—Rates Based on Air-line Distance.**

Upon investigation into the toll rates charged for messages passing between the Dakota Central Telephone Company and the Farmers' Mutual Telephone Company through the exchange of the People's Telephone Company at Blunt, the Commission found that the People's Telephone Company was receiving 10 cents per message for switching messages from one toll line to the other, two 5-cent terminal charges being collected on the theory that each message terminated at Blunt and then became an originating message for further transmission. It further found that the usual fee for switching messages from one toll line to another through an intermediate exchange was 2 cents per message, the intermediate exchange being relieved from the necessity of making the settlement between the toll lines and being required only to make such records as would enable it to collect its switching fee of 2 cents. It also found that the rate charged for messages passing between Pierre or Fort Pierre and Onida, thirty-six and thirty-seven miles respectively, was 50 cents.

Held: That the People's Telephone Company should receive a fee of not more than 2 cents for switching all messages, the toll companies to make settlements between themselves, and the People's company to be required to keep only such record as might be necessary to enable it to collect its switching fees;

That a rate of 50 cents for the transmission of a toll message for a distance of thirty-six miles is excessive;

That the rate between Pierre and Onida should not exceed 25 cents and that the 2-cent switching fee should be absorbed in the toll charges;

That the rates on all toll messages passing through the Blunt exchange should be based on the air-line distance.*

* Editor's headnote.

FINDINGS OF FACT, CONCLUSIONS AND ORDER.

W. G. Bickelhaupt appeared for the Dakota Central Telephone Company, *J. F. Williams* for the Farmers' Mutual Telephone Company of Onida, and *R. R. Hoffman* for the People's Telephone Company of Blunt.

In this cause the Board having conducted a full investigation into the rates on messages passing from the lines of the Dakota Central Telephone Company through the exchange of the People's Telephone Company at Blunt to the lines of the Farmers' Mutual Telephone Company extending from Blunt to Onida, and vice versa, now makes and orders filed the following:

FINDINGS OF FACT.

That the Dakota Central Telephone Company operates within this State not only a large number of exchanges but also a toll line, and one of its lines extends from its exchanges at Fort Pierre and Pierre to Blunt where it is connected with the exchange of the People's Telephone Company; that the People's Telephone Company owns and operates an exchange at Blunt, and the Farmers' Mutual Telephone Company owns and operates a telephone line extending from Blunt to Onida and is connected with the Blunt exchange on a switching basis, and also with the exchange of the Onida Telephone Company at Onida; that on messages passing in either direction from the lines of the Dakota Central Telephone Company at Blunt through the exchange of the People's Telephone Company to the lines of the Farmers' Mutual Telephone Company, and in the opposite direction from the lines of the Farmers' Mutual Telephone Company through said exchange to the lines of the Dakota Central Telephone Company, the People's Telephone Company at Blunt have been charging a 10-cent fee. The People's Telephone Company has up to this time treated all such messages as being local and has terminated each message in either direction at its exchange and charged a 5-cent message fee for it, and then has considered that the message originated on

its exchange and charged the 5-cent terminal fee on all such messages as an outgoing message originating on its exchange. For instance, on a telephone message from Pierre or Fort Pierre to a person at Onida the rate is 50 cents. The Dakota Central Telephone Company charges for its service to Blunt 25 cents, and of this sum it receives 20 cents and the People's Telephone Company charges 5 cents, or the terminal fee of 5 cents, on the incoming message. The message is then switched through the exchange to the lines of the Farmers' Mutual Telephone Company, and the People's Telephone Company charges a 5-cent fee for that service on the theory that it is a terminal fee on an outgoing local message. The rate charged on the message from the Blunt exchange to Onida is likewise 25 cents, and out of this amount the People's Telephone Company receives its terminal fee of 5 cents and the Onida Telephone Company another terminal fee of 5 cents and the Farmers' Mutual Telephone Company a message rate of 15 cents. The only service performed by the People's Telephone Company of Blunt is to switch the message from the lines of one telephone company to another and to make its record of the message and make settlement between the companies. At the hearing it appeared that for switching such messages from one toll line to another through an intermediate exchange a fee of 2 cents was paid to the owner of the intermediate exchange, and the intermediate exchange on such an arrangement is relieved of the necessity of making the settlement between the toll line companies and required only to make such record as would enable him to collect his switching fee of 2 cents. In fact, Mr. Hoffman of the People's Telephone Company admitted that the rate received by him for the services performed was too high, and expressed his willingness to acquiesce in such rate as might be in effect for similar services in other localities of this State.

The distance from Fort Pierre to Blunt is 21 miles, from Pierre 20 miles, and from Blunt 16 miles to Onida, so that the total distance from Pierre to Onida does not exceed 36 miles. A rate of fifty cents for the transmission of a toll

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message for a distance of 36 miles is in the opinion of this Board too high. For the mere switching of messages from one toll line to another at Blunt through that exchange the People's Telephone Company should receive a fee of not to exceed 2 cents, and the toll line companies should make settlement between themselves and the exchange at Blunt be required to keep only such record as may be necessary to enable it to collect its 2-cent switching fee on each toll message, and this fee of 2 cents should apply to all messages switched through that exchange, whether these messages are from Pierre to Onida or between other stations. The 2-cent switching fee at the Blunt exchange should be absorbed by the toll line companies and included within the toll rate, and in the opinion of this Board the rate between Pierre and Onida should not exceed 25 cents.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts the Board now hereby finds and decides:

I.

That an order should be made and entered in this proceeding establishing a joint toll rate over the lines of the Dakota Central Telephone Company and the Farmers' Mutual Telephone Company, through the exchange of the People's Telephone Company at Blunt, between Pierre and Onida, and vice versa, of not to exceed 25 cents, and fixing the compensation of the People's Telephone Company on such message, and all other messages switched from one toll line to another through the Blunt exchange, at 2 cents, and requiring all toll messages passing through the Blunt exchange to points on the lines of the Farmers' Mutual Telephone Company and the Onida Telephone Company of Onida to be based on the air-line distance;

II.

That the order should be made effective as of June 1, 1914.

Dated at Pierre, the capital, on this twenty-third day of May, 1914.

ORDER.

In this proceeding, the Board having made a full and exhaustive investigation and filed its findings of fact and conclusions, and being fully advised in the premises,

It is ordered, considered and adjudged, That from and after June 1, 1914, the compensation of the People's Telephone Company for switching messages from one toll line to another through its exchange at Blunt be, and hereby is, fixed at 2 cents per message, and that such message fee be absorbed by the toll line company and be included within the toll rate, and that all messages passing through such exchange from the lines of the Dakota Central Telephone Company, or in the reverse direction, should be based on the air-line distance, and the joint toll rate for messages originating at Pierre or Fort Pierre with destination at Onida through the Blunt exchange be and hereby is fixed at not to exceed 25 cents.

IN THE MATTER OF THE APPLICATION OF THE DELL RAPIDS
TELEPHONE COMPANY, A CORPORATION, FOR AUTHORITY
TO INCREASE ITS SWITCHING RATES.

Complaint F — 97.

Decided June 13, 1914.

Increase in Rate for Switching Rural Lines.

Application for authority to increase the switching rate for rural lines from \$1.50 per telephone per year to 25 cents per telephone per month (\$3.00 per year).

Held: That the rate of \$1.50 is unreasonably low as compared with the switching rate charged throughout the State for like service.

Rates for Switching Rural Lines Directly Connected with More than One Exchange.

Held: That the maximum charge for switching a rural line connected with a local exchange may not exceed 25 cents per month per telephone,

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but where the rural line is directly connected with two exchanges, the sum of the rates for switching should not be twice as great as that for switching at one exchange only, but should be based on a graduated scale;

That inasmuch as the applicant has not set aside any sum for depreciation, and will be unable to do so under the existing rate, if any return is allowed upon its investment, the application should be granted as respects rural lines directly connected only with the Dell Rapids exchange, the rate to be 25 cents per telephone per month (\$3.00 per year);

That the rate for switching rural lines through the Dell Rapids exchange when such lines are directly connected with other exchanges as well, should be 18½ cents per telephone per month (\$2.25 per year).

Establishment of Depreciation Reserve.

The Commission's order established the switching rates fixed upon in its opinion, and required the applicant to set aside annually, as a depreciation reserve, a sum equivalent to 7 per cent. of its reproduction value, the fund thus provided to be accounted for to the Commission in the annual report, and all replacements due to depreciation to be charged against this fund.

Annual Reports—Discontinuance of Assessments on Stockholders for Current Expenses—Elimination of Discrimination between Stockholders and Non-Stockholders—Filing of Rates and Contracts.

The order further required certain of the rural lines to file their annual reports for the past year and required the rural lines to desist from the practice of levying assessments on stockholders for the payment of operating expenses, and to conform to the statute by putting all subscribers on a rental basis, without discrimination between stockholders and non-stockholders, except that the companies' linemen may be furnished with telephonic service free of charge in connection with the performance of their duties. All the rural lines were required to file complete schedules of rates.*

REPORT.

MURPHY, Commissioner:

Hearing in this action was held before Commissioner Murphy and the counsel for the Board, Mr. P. W. Dougherty, in Dell Rapids, South Dakota, on the eleventh day of April, 1914, as per notice of hearing regularly served.

* Editor's headnote.

The applicant appeared by *O. O. Sawyer, E. J. Elliott, and A. Willikson*, its president, secretary and manager, respectively.

The following appearances were entered for the protestants, *W. H. Dockstader*, president of the Enterprise Township Telephone Company, *John E. Anderson*, secretary, and *Gunerius Thompson* and *Oluf Lyng*, directors of the Dell Rapids and Baltic Telephone Company.

No appearances were made for the Logan Township Telephone Company and the Burke Township Telephone Company:

Section IV of the application states:

"That the lawful rate of this applicant for the switching of telephone messages for rural telephone companies connected with its system or exchange in the city of Dell Rapids on a switching basis is \$1.50 per annum, and that there are connected with the local exchange and telephone system at Dell Rapids, on a switching basis, the rural telephone lines as follows:

Enterprise Township Telephone Company,
Logan Township Telephone Company,
Burke Township Telephone Company, and the
Dell Rapids and Baltic Telephone Company."

In Section VI. of said application, request is made for authority to increase the rates for switching messages to and from the lines of the above named rural companies and to put into effect a rate of 25 cents per month for each telephone instrument located on the lines of the said rural telephone companies.

From the evidence taken at the hearing and from the annual report filed in this office, it appears that the Dell Rapids Telephone Company owns and operates an exchange at Dell Rapids and in the vicinity thereof, consisting of 265 business and residence 'phones and 140 rural 'phones, and that its schedule of rates is as follows:

Business main line.....	\$2 00 per month.
Residence main line.....	1 00 per month.
Rural party line	15 00 per year.

These rates, compared with the rates charged by other companies in similar towns under like conditions, cannot

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be considered unreasonable in themselves, but it is a fact that the present rate of \$1.50 per 'phone per year is unreasonably low compared with the switching rate charged generally over the State for like service; and from the further fact that the applicant has not set aside any sum for depreciation and that it would be unable to provide a sufficient amount for this purpose from its present receipts, if any return were allowed upon the investment, it is our opinion and conclusion that the application should be granted in so far as [respects]* any line having direct connection with the Dell Rapids exchange and for which the said exchange does all the switching, and that the rate should be fixed at 18¾ cents per month, or \$2.25 per year, per 'phone, for each 'phone on a line having direct connection with both Dell Rapids and a second exchange.

As was held in the *Montrose* case,† where a rural party line is connected with a local exchange, the maximum charge for switching may not exceed 25 cents per month per 'phone, but where there is a direct connection of one rural party line with two exchanges, the charge for switching should not be twice as great as for switching service at one exchange but should rather be constructed on a graduated scale.

It is our opinion, therefore, that an order should be made granting the Dell Rapids Telephone Company authority to put into effect on the lines of the Logan Township Telephone Company and the Burke Township Telephone Company a switching rate of 25 cents per 'phone per month (or \$3.00 per 'phone per year) and on the lines of the Dell Rapids and Baltic Telephone Company and the Enterprise Township Telephone Company a rate of 18¾ cents per 'phone per month (or \$2.25 per year), said rates to be effective on and after July 1, 1914; and that it be further ordered that the Dell Rapids Telephone Company be required to set aside annually 7 per cent. of its reproduction

* Ed.

† *In the Matter of the Investigation of the Rates, Charges, and Practices of the Montrose Telephone Company, et al.* Complaint No. 1663, printed in Commission Leaflet No. 31, at page 101.— Ed.

value as a depreciation reserve and that the said company be required to account to the Commission in its annual report as to the manner of handling same.

The investigation discloses that the Logan Township Telephone Company, the Burke Township Telephone Company and the Enterprise Telephone Company have failed to file with this Board annual reports as required by law; and further that these telephone companies and also the Dell Rapids and Baltic Telephone Company are levying assessments against the stockholders for the payment of expenses instead of providing a legal rental rate which must be charged to all subscribers alike whether stockholders or non-stockholders. An order should issue requiring the necessary reports, as well as certified copies of contracts and agreements, to be filed with this Board as provided by law, and that they be required to desist from the practice of levying assessments for the purpose of meeting their expenses, and that each of the said companies be required to file with this Board a schedule of rental rates for telephone service.

Done at the city of Pierre, the capital, on this thirteenth day of June, A. D. 1914.

(ORDER.

This Board having made a careful examination and conducted a hearing at which the testimony of all the telephone companies interested was presented in the record for the consideration of the Commission, and the Commission having made and filed its report containing its findings of fact and conclusions and being fully advised in the premises,

It is, therefore, ordered, considered and adjudged, That permission be, and hereby is, granted to the Dell Rapids Telephone Company to charge for its switching services for switching messages at its exchange for the Logan Township Telephone Company and the Burke Township Telephone Company at the rate of 25 cents per month for each telephone instrument, or \$3.00 per annum; and as to those telephone companies whose lines connect not only with the exchange of the applicant at Dell Rapids but with other exchanges as well, to wit, the Dell Rapids and Baltic Telephone Company and the Enterprise Township Telephone

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Company, the compensation to be paid to the Dell Rapids Telephone Company by each of said telephone companies be, and hereby is, fixed at $18\frac{3}{4}$ cents per month for each telephone instrument, or \$2.25 per year; and that the rates permitted to be charged and herein established for switching service for said telephone companies at the exchange of the applicant shall become effective on and after the first day of July, 1914,

And it is further ordered, That the Dell Rapids Telephone Company be, and hereby is, required to set aside an annual depreciation reserve fund equivalent to 7 per cent. of its reproduction value, and include in its annual report to this Board the funds so set aside, and that all replacements due to depreciation be charged to this depreciation reserve fund;

And it is further ordered, That the Logan Township Telephone Company and the Burke Township Telephone Company and the Enterprise Township Telephone Company be, and each of them hereby is, commanded and required to file its annual report for the fiscal year just ended, using for that purpose the form of report enclosed with this order, and that the Dell Rapids and Baltic Telephone Company and the Logan Township Telephone Company and the other telephone companies interested in the controversy in this case are hereby admonished to cease and desist from the practice of levying assessments against stockholders for the payment of operating expenses, and commanded and required to conform to the statute by putting all subscribers on a rental basis, and to cease and desist from granting any other or different rate to a stockholder than to a person who is not a stockholder, except that the lineman of the company may be furnished a telephone instrument and telephone service in connection with the performance of his duties free of charge; and that all said telephone companies be, and hereby are, required to file with and in the office of the Board of Railroad Commissioners full and complete schedules of rates exacted by them for telephone service.

WISCONSIN.

Railroad Commission.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE LINE
OF THE MATTOON TELEPHONE COMPANY IN THE TOWN
OF NORWOOD, LANGLADE COUNTY, WISCONSIN.

Decided April 14, 1914.

Public Convenience and Necessity — Invasion of Occupied Field.

Upon petition of the Mattoon Telephone Company for authority to extend its line in the town of Norwood, the Antigo Telephone Company entered its objection. It appeared that the Antigo company operated a toll line running from Antigo through the village of Phlox to the village of Mattoon where it connected with the switchboard of the petitioner. Petitioner already has legal authority to extend its line north in the direction of Phlox, but the line, as now authorized, stops about one-half mile short of that village.

It further appeared that the Antigo company makes a toll charge of 15 cents for the first three minutes for all messages over its toll line. This rate is uniform whether the toll line is used for its whole length between Antigo and Mattoon or only for that portion of its length between Phlox and Antigo or Phlox and Mattoon.

The Commission found that if the Mattoon company's line were extended into Phlox so that the residents of that village could connect with it and reach Mattoon without paying any toll charge, that line would be used for messages from Phlox to Mattoon to the exclusion of the toll line now in existence; that if, on the other hand, the Mattoon line should stop one-half a mile south of Phlox the farmers connected with said line could still reach Phlox by calling the Mattoon exchange and being switched over the Antigo company's toll line at the regular charge of 15 cents; that thus these farmers would not be deprived of the opportunity to reach Phlox for the transaction of such business as they might have there, but they would do so over the existing line and would contribute to the cost of maintenance and interest charges of that line.

Held: That public convenience and necessity did not require the extension of the Mattoon company's line for local service into Phlox since an adequate line now exists for connection with the residents of that village.

That if the 15 cent toll rate is excessive the Commission can upon the institution of proper proceedings, reduce the rate.*

* Editor's headnote.

OPINION AND DECISION.

On March 25, 1914, the Mattoon Telephone Company served notice upon this Commission of a proposed extension of its line in the town of Norwood, Langlade County, Wisconsin, and shortly thereafter notice was received from the Antigo Telephone Company of its objection to the proposed extension. The matter was thereupon set for a hearing which was held at Antigo on April 8, 1914. The Mattoon Telephone Company was represented by *S. H. Kratz* and the Antigo Telephone Company by *T. W. Hogan* and *Edward Cleary*.

The Antigo Telephone Company has a toll line running from Antigo on the north through the unincorporated village of Phlox to the village of Mattoon, where it connects with the switchboard of the Mattoon Telephone Company. The latter company already has legal authority for an extension of its line north in the direction of Phlox but the line as now authorized stops a half mile short of that village. The present case involves a proposed extension of line into the village of Phlox. None of the line has as yet been built, it being the purpose of the Mattoon Telephone Company to ascertain before beginning construction whether the entire line to Phlox will be authorized. Six contracts have been secured for service upon the line as originally proposed, but the Mattoon Telephone Company has been assured of the patronage of twenty to twenty-five additional farmers if the line is constructed through to Phlox.

The Antigo Telephone Company's toll line from Antigo to Mattoon through Phlox connects with five telephone stations in the latter village, all of which are toll stations. The toll charged at this station of Phlox is 15 cents for the first three minutes and 5 cents for each additional minute of conversation. This rate is uniform over the entire toll line, whether used for its whole length between Antigo and Mattoon or only for the portion of its length between

Phlox and Antigo or Phlox and Mattoon. Phlox is about four miles north of Mattoon and twelve miles south of Antigo.

It is quite apparent that if the Mattoon line were extended into Phlox so that the residents of that village could connect with it and reach Mattoon without paying any toll charge, that line would be used for messages from Phlox to Mattoon to the exclusion of the toll line now in existence. If, on the other hand, the Mattoon line stops half a mile south of Phlox, as the company first intended, the farmers connected with that line could still reach Phlox by calling the Mattoon exchange and being switched over the Antigo Telephone Company's toll line at the regular charge of 15 cents. Thus these farmers would not be deprived of the opportunity to reach Phlox for the transaction of such business as they might have there, but they would do so over the existing line and would contribute to the cost of maintenance and interest charges on that line.

We believe it cannot be said that public convenience and necessity require the extension of the Mattoon line for local service into Phlox when an adequate line now exists for connection with the residents of that village. As far as the testimony shows, there is no particular need for local telephone service within the village of Phlox as distinguished from service which will enable the residents of the village to reach and be reached by other points. Phlox, it was stated at the hearing, is an inland village of about thirty families, with seven business places. In addition to the five business places which have toll stations, there is one public pay station, and as far as we are advised, the needs of the residents are satisfied by these stations, as far as the quality and quantity of service are concerned. If the 15-cent toll rate is excessive, this Commission can upon the institution of proper proceedings reduce the rate, but in any event the present record shows nothing so burdensome in the situation as to warrant an extension which will necessarily cause great loss of revenue to the Antigo Telephone Company.

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We therefore find and determine, That public convenience and necessity do not require the extension of the line of the Mattoon Telephone Company in the town of Norwood, Langlade County, Wisconsin, as proposed in the notice filed by said Mattoon Telephone Company with this Commission on the twenty-fifth day of March, 1914.

Dated this fourteenth day of April, 1914.

EARL TELEPHONE COMPANY v. TREGO TELEPHONE COMPANY.

Decided May 8, 1914.

Public Convenience and Necessity — Invasion of Occupied Territory — Line in Process of Construction Prior to Passage of Statute — Distribution of Poles Constitutes "Process of Construction."

Held: That the distribution of poles along the route of a proposed telephone line prior to the passage of the statute forbidding the extension of lines without authority from the Commission constitutes an overt act sufficient to justify the assertion that the line was in process of construction prior to the passage of the statute and therefore exempted from its action.

Representations Made by Invading Company as to Service to be Rendered by Proposed Line.

Held: That even if the invading company deliberately conceals from the company occupying the field its intention to build a line for local service and permits it to appear that the proposed line is intended for toll service only, the representations made by the invading company will not be material in a suit to prevent the construction of the proposed line without authority from the Commission, except as evidence of the company's actual intention prior to the passage of the statute requiring the Commission's approval, provided the process of construction was begun prior to the passage of the law forbidding the building of a line for local service in competition with the company occupying the field.*

OPINION AND DECISION.

This case involves an alleged violation of Chapter 610 of the Laws of 1913, relating to the extension of telephone companies' lines, by the Trego Telephone Company. It is alleged by the Earl Telephone Company in its complaint

* Editor's headnote.

that the Trego company, without authority of law, extended its line in the summer and fall of 1913 in territory already occupied by the Earl Telephone Company. The defense of the Trego Telephone Company is that the construction of its line was begun prior to the enactment of Chapter 610 and the company therefore considered itself entitled to complete the line. A hearing was held in the matter at Spooner on February 13, 1914, at which the Trego Telephone Company was represented by *W. R. Campbell* and the Earl Telephone Company by *Archie Hope*.

The territory involved in this case is in the main that which lies between the unincorporated villages of Earl and Springbrook, in Washburn County. It seems that the Earl Telephone Company has for some years had telephone lines in the vicinity of Earl. One of these lines runs through the village of Earl and for a mile or so in the northeasterly direction along the road toward Springbrook. Another of its lines runs in a roundabout manner into Springbrook. The extension which the Trego Telephone Company was alleged to have built without authority followed the direct road out of Earl, paralleling the Earl line to its terminus and continuing on the same highway to the village of Springbrook. The result was that the Trego line paralleled the Earl line for over a mile and also reached the village of Springbrook, which was already served by the Earl company over its roundabout line. In addition, there was a short paralleling of the Earl line south of Earl since the Trego company at the time it began extending had not yet reached that village. The Trego company in passing through Earl installed an instrument in the general store there, and that store as a result now has both companies' telephones. The manager of the store acts as central operator for the Earl line. This store appears to be the only subscriber thus far secured on the new Trego line within the distance that the two lines run parallel, but the Trego company has also installed at least two telephones in Springbrook.

The evidence is not disputed as to the fact that the new line of the Trego company was built in the summer and

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fall of 1913. It was shown, however, that the poles for this line were hauled about in April and May, 1913, which was over two months before Chapter 610 of the Laws of 1913 became effective, and it was the claim of the Trego Telephone Company that the hauling of the poles was sufficient to establish that company's right to make the extension. It seems that poles were hauled and left lying along the entire route of the proposed line as far as the limits of the village of Springbrook, except that the poles intended to be set through the village of Earl were not distributed but were left in a pile near a warehouse in that village. At a few points along the line the poles were moved across the road before being set, but in general they were left at almost the exact points where they were later erected.

With regard to the question presented by the Trego Telephone Company as to its right to continue construction of its line after the poles had been hauled and were ready to be set, it seems to us that the position of the company is well taken. Chapter 610 of the Laws of 1913 became effective July 10, 1913. It was, of course, not intended to affect extensions already made, nor could the legislature be supposed to have intended to affect extensions already in process of construction. Thus, if a company had set its poles and strung its wires, but had not yet installed any telephone instruments along the line, it could hardly be claimed that the enactment of the new law could prevent the company from attaching subscribers to the line thus constructed. If this is the case, it would seem that the setting of the poles without the stringing of the wires should also be enough to establish the company's right, and it is then but a short step to the situation actually existing in this case where the poles had been hauled and were ready to be erected. The cost of purchasing and hauling poles is a very considerable portion of the total cost of the poles erected in place, so that it seems that the company had gone to sufficient expense and committed enough of an overt act to justify the assertion that its line was in course of construction. Furthermore, the placing

of the poles at about the point where they were later erected marked out very distinctly the territory which the company was to cover. There was therefore much more than an undefined intention on the part of the officers of the Trego company as to the construction of the line; there was the performance of an act which constituted an important part of the actual work of construction and which also gave visual demonstration of the location of the proposed line. Under these circumstances, we think Chapter 610 of the Laws of 1913 does not affect the line of the Trego Telephone Company as constructed to the village of Springbrook.

The main contention of the Earl Telephone Company, however, is that the hauling and placing of the poles was for the purpose of constructing merely a toll line, and that the officers of the Trego Telephone Company later changed their minds and made the line into a local subscribers' line. The manager of the Earl Telephone Company testified that when he asked the then manager of the Trego company, Mr. John T. Fielding, why poles had been delivered on the highway occupied by his own line, Mr. Fielding had told him not to worry about the new line, since it was only to be a part of a toll line between Spooner and Hayward, a portion of which was to be built by the Trego company and a portion by the Hayward company. It was testified that this conversation took place in the spring of 1913, after the poles had been delivered. Mr. Fielding testified that he remembered the conversation but that he made no such statement as the one attributed to him. He admitted that the original intention had been to construct a toll line from Spooner to Hayward, but stated that the proposition had fallen through, due to lack of co-operation by the Hayward company, some months before the poles were delivered. It then transpired, according to his testimony, that farmers in the vicinity of Springbrook and country north thereof desired the service of the Trego company, and that company decided to build a line to them and had the poles delivered for that purpose. Mr. Fielding testi-

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fied that at the time of the conversation between him and the manager of the Earl line he already had contracts with some of these farmers. The testimony along this line is corroborated by that of one of the farmers in question, who said that about January, 1913, he talked with Mr. Fielding with regard to the extension of line for local service to his vicinity and agreed that he would assist in hauling and setting the poles.

Although the evidence is in some conflict as to whether the Trego company intended building a local or a toll line when it delivered its poles, we believe it is fairly well established that the local line was in contemplation at the time. It is not denied that a toll line had previously been contemplated and it is entirely possible that some misunderstanding may have arisen in the mind of the Earl Telephone Company's manager due to this fact; or it is possible that the Trego Telephone Company deliberately concealed from the Earl Telephone Company its intention of building a local line and let it appear that the line was for toll service only, but even if this were the case, there was no law at that time to prevent the building of a local line in competition with the Earl line, and the representations made by the Trego Telephone Company would not be material to this case except as they might tend to show that company's actual intention.

We are unable to find from the evidence that the Trego Telephone Company violated the law in the construction of its line from Springbrook. It will, of course, be understood that any further extension of that company's lines will require previous notification to this Commission and to the other companies operating in the towns where the extensions are to be made. The same requirement will apply to any further extension within the unincorporated village of Springbrook, since that village is legally only a part of the town of Springbrook.

It follows that no order will be made in this case.

Dated at Madison, Wisconsin, this eighth day of May, 1914.

In re APPLICATION OF THE TREGO TELEPHONE COMPANY FOR
AUTHORITY TO INCREASE ITS RATES, TOLLS AND CHARGES.
THE TREGO TELEPHONE COMPANY *v.* THE EARL TELEPHONE
COMPANY.

Decided May 16, 1914.

Discontinuance of Free Service between Exchanges — Imposition of Toll Charges — Division of Rate for Service over Jointly Owned Line.

1. Application for the establishment of a reasonable rate for toll messages passing between Earl and Trego, and from Trego to Spooner. No charge was made for this service at the time of application.

2. Complaint that the equal division of the toll charge of 15 cents from Earl to Spooner is inequitable, for the reason that the Trego Telephone Company owns $6\frac{1}{2}$ miles, and the Earl Telephone Company only $\frac{3}{4}$ of a mile of the jointly owned line. The complainant prays that it be allowed 10 cents instead of $7\frac{1}{2}$ cents on messages from Earl to Spooner.

The Commission's computations showed that if a toll charge of 10 cents were imposed for service from Trego to Spooner, and the 15 cent toll charge from Earl to Spooner divided 9 cents to the Trego Telephone Company and 6 cents to the Earl Telephone Company, and the free service between Trego and Earl retained, the total return to the companies would approximately equal the cost of service, including the return on the investment, and the revenues would be divided among the companies as equitably as could be determined.

Continuance of Free Interchange of Service between Adjoining Exchanges — Development of Business.

The reasons advanced for retaining the free interchange of service between Trego and Earl were as follows:

1. The companies are located closely together, and their subscribers have much in common.

2. The extent of the free service afforded by each of the companies of itself is quite limited.

3. The business is in an early stage of development, and the imposition of a toll charge would tend to hinder materially the development of the business of both companies.

4. The cost of the free service and the return on the investment in the toll line may be considered as included in the regular rental.

Held: That the continuance of free service will work no hardship to either company, and, in fact, would appear to work to the advantage of both in the development of their business.

Imposition of Toll Charge.

The imposition of a 10 cent charge for messages from Trego to Spooner was justified by the fact that 15 cents was charged by the Spooner com-

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pany for messages passing from Spooner to Trego, so that an uneven distribution of traffic resulted and the Trego company received no return on its investment from the calls which it originated, nor did it receive from other sources a return sufficient to meet the expenses incident to this service.

Division of Joint Rate.

The Commission's division of the toll charge between Trego and Earl was justified by the fact that the Earl Telephone Company was held responsible for the collection of the toll charges, which involved an expense which would, to a considerable extent, offset the greater investment of the Trego Telephone Company.

Order.

The rates and division of joint rate, found reasonable in the Commission's opinion, were established by its order.*

OPINION AND DECISION.

The application of the Trego Telephone Company in the first of the above entitled cases sets forth that at the present time there is no toll rate in effect between the Earl exchange and the Trego exchange, or from the Trego exchange to the Spooner exchange, and the applicant prays that the Commission make an order establishing such rates and charges between these exchanges as shall appear just and reasonable.

In the second of the above entitled cases the Trego Telephone Company sets forth in its complaint:

1. That the petitioner, *i. e.*, the Trego Telephone Company, and respondent, *i. e.*, the Earl Telephone Company, own jointly $7\frac{1}{4}$ miles of line, of which petitioner owns $6\frac{1}{2}$ miles and respondent owns only $\frac{3}{4}$ of a mile;

2. That a rate of 15 cents per message between Earl and Spooner has been and now is in effect;

3. That such toll charge has been divided equally between the Trego Telephone Company and the Earl Telephone Company, notwithstanding the fact that the petitioner owns the greater portion of the line.

4. Petitioner therefore prays for a more equitable division of such tolls.

* Editor's headnote.

Hearing was held in these matters at the office of the Railroad Commission at Madison on March 4, 1914. *W. R. Campbell* appeared for the applicant. There was no appearance for other parties concerned. Through an investigation which has been made of the situation by the Commission, and some testimony in the cases, the following facts have been established.

The Trego Telephone Company operates an exchange in the village of Trego and serves a total of 90 subscribers, 30 of whom are in the village of Trego on single party full metallic lines, and the remaining 60 are on rural grounded lines running in all directions from this village. One 150-drop Julius Andrae switchboard with 44 drops in use is installed at Trego. Rates for service are \$12.00 per year per telephone.

The Earl Telephone Company operates three rural grounded party lines and one single party line, with a total of 45 'phones connected. The territory covered by this company lies principally south and east of the village of Earl, although one line extends in a roundabout way to the village of Springbrook, which lies about four miles northeast of Earl. This company has two centrals, one of which it calls its "day central" and one its "night central." The "day central" is located in a store in the village of Earl, $3\frac{3}{4}$ miles east of Trego, and consists of a 10-line Julius Andrae wall type plug board. The "night central" is located at the home of the company's manager, about three miles southeast of the "day central." By means of switches, all lines are connected to the manager's residence after the store is closed at night. Rates for service are \$12.00 per year per telephone.

Although the Spooner Telephone Company has not been made a party to this case, one of the toll lines in question enters the exchange of this company, hence a brief outline of the extent of the operation of this company will be given that more light may be thrown upon this situation.

The Spooner Telephone Company operates one exchange

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located in the village of Spooner, 285 telephones belonging to this company besides a number of telephones which are attached to foreign lines which are served by this exchange. A 300-drop switchboard, with 252 drops in use, is in operation.

The toll lines in question in these cases are two grounded through lines, one running between Trego and Spooner, 9.25 miles in length, and the other running between Trego and Earl, 3.83 miles in length. The following table gives the amount of toll charges now in effect on these lines and the division of the revenues among the companies:

<i>From</i>	<i>To</i>	<i>Rate</i>	<i>Spooner Telephone Company</i>	<i>Trego Telephone Company</i>	<i>Earl Telephone Company</i>
Spooner.....	Trego	\$.15	\$.15		
Spooner.....	Earl .....	.15	.15		
Trego.....	Spooner	Free			
Trego.....	Earl	Free			
Earl.....	Spooner .....	.15		.075	.075
Earl.....	Trego	Free			

As has been previously pointed out, the petitioner asks that such rates as the Commission finds just and reasonable be established upon calls both ways between Earl and Trego, and upon calls from Trego to Spooner. Further, the petitioner contends that the present division of tolls between the Trego Telephone Company and the Earl Telephone Company on calls from Earl to Spooner, is unjust, inasmuch as the petitioner owns much the larger share of the joint line used by the two companies. Petitioner prays that it be allowed 10 cents instead of 7½ cents on each message going through its exchange from Earl to Spooner.

An approximate valuation of the lines in question has been made by the Commission, which is as follows:

AN ESTIMATE OF APPORTIONED VALUATION OF TRUNK LINE BETWEEN TREGO AND SPOONER.

PROPERTY OF TREGO TELEPHONE COMPANY.

	Unit	Quantity	Unit price	Cost of reproduction	Scrap value (per cent. condition)	Present value
Native poles.....	Each	40	\$1 00	\$40	45	\$18
25'-6" poles.....	Each	6	3 10	\$19		
10-pin cross-arms.....	Each	8	1 10	9	28	25
4-pin cross-arms.....	Each	40	63	\$25		
No. 12 iron wire (galv.).....	Mile	3½	11 60	38	67	42
Central office equipment, cable, etc.....			5 00	5	60	3
TOTAL.....				\$136		\$88
Add 12 per cent. (see note).....				16		11
TOTAL.....				\$152		\$99

PROPERTY OF SPOONER TELEPHONE COMPANY.

	Unit	Quantity	Unit price	Cost of reproduction	Scrap value (per cent. condition)	Present value
Native poles.....	Each	8.75	\$1 20	\$10	45	\$4
25'-6" cedar poles.....	Each	119	2 43	289	90	260
35'-6" cedar poles.....	Each	.45	7 73	3	67	2
10-pin cross-arms.....	Each	1	1 10	\$1		
4-pin cross-arms.....	Each	22.75	63	14		
Brackets.....	Each	105	03	3		
Central office equipment, cable, etc.....			8 00	8	56	10
TOTAL.....				\$328		\$282
Add 12 per cent. (see note).....				39		34
TOTAL.....				\$367		\$316

Note: Add 12 per cent. to cover engineering, superintendence, interest during construction, contingencies, etc.

AN ESTIMATE OF APPORTIONED VALUATION OF TRUNK LINE BETWEEN TREGO AND EARL.

PROPERTY OF TREGO TELEPHONE COMPANY.

	Unit	Quantity	Unit price	Cost of reproduction	Scrap value (per cent. condition)	Present value
35'-6" cedar poles.....	Each	.5	\$7 77	\$4		
30'-6" cedar poles.....	Each	.25	4 93	1		
25'-6" cedar poles.....	Each	3.5	3 11	11		
25'-5" cedar poles.....	Each	13.5	2 43	33		
20'-5" cedar poles.....	Each	18.7	1 63	30		
6-pin cross-arms.....	Each	5.5	75	4		
4-pin cross-arms.....	Each	6.3	63	4		
Brackets.....	Each	73	03	2		
Anchors.....	Each	1	3 00	3		
No. 12 iron wire (galv.).....	Mile	3	11 60	35		
Cable and central office equipment.....			5 00	5	90	\$114
TOTAL.....				\$132	60	3
Add 12 per cent. (see note).....				16		\$117
TOTAL.....				\$148		14
TOTAL.....						\$131

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PROPERTY OF EARL TELEPHONE COMPANY.

	Unit	Quantity	Unit price	Cost of reproduction	Scrap value (per cent. condition)	Present value
Native poles.....	Each	9.75	\$0 80	\$8		
Brackets.....	Each	14	03	\$8	60	\$5
2" x 6" pin cross-arms.....	Each	2.75	50	1	54	1
No. 12 iron wire (galv.).....	Mile	.85	11 60	10	90	9
Central office equipment.....			5 00	5	50	2
TOTAL.....				\$24		\$17
Add 12 per cent. (see note).....				3		2
TOTAL.....				\$27		\$19

Note: Add 12 per cent. to cover engineering, superintendence, interest during construction, contingencies, etc.

The above valuation shows that, taking the two toll lines as a whole, the Spooner Telephone Company owns 53 per cent., the Trego Telephone Company owns 43 per cent. and the Earl Telephone Company 4 per cent. Allowing reasonable amounts for interest, depreciation and maintenance on this property, we find that the companies concerned should receive as a return per year from this part of their investment, amounts approximately as follows: The Spooner Telephone Company, \$73.00; the Trego Telephone Company, \$60.00; and the Earl Telephone Company, \$5.00.

Definite data as to the number of calls which will go over these lines under rearranged conditions and the exact cost to handle these calls is not available. However, from such data as we have, computations have been made which indicate that the entire cost to each company of furnishing this service for one year, including operating labor, proper return on investment and all other items which should be considered, is approximately as follows: Spooner Telephone Company, \$138; Trego Telephone Company, \$117; Earl Telephone Company, \$28.00. Further computations indicate that with a 10-cent toll charge on calls from Trego to Spooner, with a 15-cent toll charge from Earl to Spooner, divided 9 cents to the Trego Telephone Company and 6 cents to the Earl Telephone Company, with free service between Earl and Trego, and with no change in the rate from Spooner to either Trego or Earl, the total return to the companies per year for the maintenance of

the service will about equal its cost as given above, and with the division of these toll charges as above indicated, the revenues will be divided as equitably among the companies concerned as can be determined at this time. This schedule contemplates the retaining of free service between Trego and Earl.

In view of the following facts, this free service seems in this case to be justifiable:

1. The companies involved are located closely together, and, as a result, the subscribers of both exchanges have much in common, as is established by the comparatively large number of calls per telephone passing daily between the two exchanges.

2. The extent of free service which either of these companies by itself furnished its patrons is quite limited, covering only 45 'phones for one company and 90 'phones for the other.

3. The telephone industry in this section is now going through the earlier part of its development. The placing of a toll charge upon calls between these two exchanges, it is believed, would have a tendency to materially hinder the development of business of both companies.

4. The return on the physical investment in the toll line is taken care of for both companies in the return computed from the toll charges which have been allowed. The labor charge for the free calls, it is believed in this case, may well be considered as being included in the regular yearly rental paid by the subscribers of the companies.

Taking all the facts into consideration, we believe that it will work no special hardship on the two companies to continue the free service, and in fact, would appear rather to work to the advantage of both in the development of their business.

The part of the schedule contemplating a 10-cent toll charge on calls from Trego to Spooner would not seem to require much discussion. Heretofore, messages from Trego to Spooner over this line have been free, while mes-

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sages in the opposite direction are charged for at the rate of 15 cents per call. This has resulted in a very uneven distribution of the traffic between the two companies. Moreover, the Trego Telephone Company has had no return upon its investment in this toll line from calls which it originates, and the return from other sources has not been sufficient to cover the expense incident to this service. The computations indicate that a 10-cent toll charge from this service, together with the 9 cents per call on calls to Spooner from the Earl Telephone Company, will about cover the cost of handling these calls and provide a reasonable return from this company's toll line investment.

With reference to the division of toll charges on calls from the Earl exchange between the two companies interested, it would at first seem, taking into consideration only the investment and operating labor, that the Trego Telephone Company should receive a large percentage of this toll charge. However, it must be borne in mind that the Earl Telephone Company is held responsible for the collection of the toll charges, the expense of which will offset, to a considerable extent, the higher investment of the petitioner. From computations which have been made of the cost to provide this service, it seems fair that this 15-cent toll charge be divided, 9 cents to the Trego Telephone Company and 6 cents to the Earl Telephone Company.

The Commission sees no good reason for postponing action in this matter, as has been requested by the petitioner. The following order will therefore take effect on June 1, 1914:

It is, therefore, ordered, That the present schedule of toll rates and division of tolls involving the Trego Telephone Company and the Earl Telephone Company be discontinued, and the following schedule substituted with divisions of all toll as indicated:

<i>From this exchange</i>	<i>To this exchange</i>	<i>Rate per call</i>	<i>Revenue to Trego Telephone Company</i>	<i>Revenue to Earl Telephone Company</i>
Trego.....	Spooner	10 cents	10 cents	....
Trego.....	Earl	Free	....	....
Earl.....	Spooner	15 cents	9 cents	6 cents
Earl.....	Trego	Free	....	....

Dated at Madison, Wisconsin, this sixteenth day of May, 1914.

IN THE MATTER OF THE PROPOSED EXTENSIONS OF THE LINE
OF THE WISCONSIN TELEPHONE COMPANY IN THE TOWN
OF ANSON, CHIPPEWA COUNTY.

IN THE MATTER OF THE PROPOSED EXTENSIONS OF THE LINE
OF THE CHIPPEWA COUNTY TELEPHONE COMPANY IN THE
TOWN OF ANSON, CHIPPEWA COUNTY.

U — 314.

Decided May 26, 1914.

Public Convenience and Necessity — Extension of Lines into Unoccupied Territory.

The Wisconsin Telephone Company having filed notice of its intention to extend its telephone line into the town of Anson, the Chippewa County Telephone Company filed its objection, and also filed notice of certain proposed extensions of its own in the town of Anson. An objection to the Wisconsin Telephone Company's extension was also filed by the Cadott Telephone Company.

It appeared that there were four classes of prospective subscribers: (1) Those located on the highways upon which the Wisconsin company's lines were already in service; (2) those located in territory to which the Chippewa company was much nearer; (3) those at present served by, or residing along the line of, the Cadott Telephone Company; (4) those at present without telephone service, and in order to serve whom an extension must be built by either one or the other company.

The Commission permitted the Wisconsin company to serve the applicants in group 1, and the Chippewa company to serve those in group 2.

Invasion of Occupied Field.

Held: That no sufficient reason appeared for the entrance of either the Wisconsin company or the Chippewa company into the Cadott company's field.

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Selection of Company to Serve Unoccupied Territory.

It appeared that from a geographical standpoint there was no choice as to which company should serve the prospective subscribers in group 4. The Commission thereupon considered the preferences of the proposed subscribers, and it appearing that the majority favored the Chippewa company because it had the greater development at Anson, the Commission found that public convenience and necessity did not require the extension of the Wisconsin Telephone Company to serve the members of this group. No such finding was made in the case of the Chippewa company, and therefore, by operation of law, authority was vested in the Chippewa company to proceed with the extension after twenty days.*

OPINION AND DECISION.

On May 6, 1914, the Wisconsin Telephone Company filed with this Commission notices of proposed extensions of its lines in the town of Anson, Chippewa County, Wisconsin. Upon being notified of these proposed extensions, the Chippewa County Telephone Company filed its objection to them, and also filed notice of certain proposed extensions of its own in the town of Anson. Objection to the Wisconsin Telephone Company's extensions was also filed by the Cadott Telephone Company. A hearing was held upon the propositions of both the companies at Cadott on May 21, 1914. The Wisconsin Telephone Company was represented by *J. F. Krizek*, the Chippewa County Telephone Company by *T. J. Connor*, and the Cadott Telephone Company by *O. J. Jensen*.

The notice filed by the Wisconsin Telephone Company involved eighteen proposed subscribers in the town of Anson. Of these, the four in Sections 14, 23 and 19 appear to be located on highways on which the Wisconsin Telephone Company's line is already in service, passing the four residences, so that there can be no question as to the propriety of the company's rendering service to these individuals. Of the other fourteen subscribers, eight are now served by the Cadott Telephone Company or are so located that the Cadott line runs along the highway past their houses. The remaining six proposed subscribers are not

* Editor's headnote.

now served by any telephone company and reside mainly on or near a north and south road which crosses at right angles the highway on which the Cadott Telephone Company's line is located.

The sixteen subscribers whom the Chippewa County Telephone Company proposes to attach to its system may be divided into two groups. The most northerly of these groups consists of three persons living in Sections 4 and 10 of the town, who now have no telephone service. The Chippewa County Telephone Company is much nearer to them than is any other company and will be permitted to serve these persons without further question. Eleven of the remaining thirteen proposed subscribers of the Chippewa County Telephone Company are identical with eleven of the fourteen proposed subscribers of the Wisconsin Telephone Company above referred to. Five of these eleven are now served by the Cadott Telephone Company or reside along its line. The eight remaining persons whom the Chippewa County Telephone Company proposes to serve include the six prospective subscribers of the Wisconsin Telephone Company mentioned above as residing on or near the north and south road, together with two others near the same road in Sections 17 and 21.

As to the proposed subscribers of the Wisconsin Telephone Company and the Chippewa County Telephone Company who are now served by the Cadott Telephone Company or whose houses are now passed by that company's lines, no sufficient reason has been shown for the entrance of either of the two companies into the Cadott Telephone Company's field. In fact, at the close of the hearing it was proposed by the Wisconsin Telephone Company that its extension should be so constructed as not to reach any of these Cadott Telephone Company subscribers, and the Chippewa County Telephone Company also indicated a willingness to relinquish its claim as to these subscribers.

In effect therefore, the proposal of each company may be considered to be amended so as to eliminate the persons

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living along the line of the Cadott Telephone Company. This elimination, as above pointed out, will affect five of the proposed Chippewa County company's subscribers and eight of the proposed subscribers of the Wisconsin Telephone Company. It did not appear very clearly at the hearing that these persons had any considerable complaint to make of the service they were receiving from the Cadott Telephone Company or of the rates they were paying to that company. Since an extension of either of the other lines to them would result in a clear duplication of service, it would not be proper in the absence of convincing evidence of failure and inability of the Cadott Telephone Company to give satisfactory service, to admit another company into the identical territory occupied by it.

The elimination just suggested leaves six persons claimed by both the Wisconsin Telephone Company and the Chippewa County Telephone Company, together with two others claimed by the latter company but not secured as subscribers by the former. Since none of them now have service or are able to get it without an actual extension of a telephone line for some distance to them, there can be no question that public convenience and necessity require the extension of one of the companies. The question to be determined is, which of the two companies shall be permitted to make the extension.

It appears from the evidence that most, if not all, of the six persons were approached by the Wisconsin Telephone Company in 1913, and applications for service were obtained from them. The extension of service was not made at this time and a new set of applications were obtained from the six persons in the spring of the present year. Pursuant to the statute, notice was then filed with this Commission and with the Chippewa County Telephone Company of the Wisconsin Telephone Company's intention, and after the filing of this notice the Chippewa County Telephone Company sent representatives out to interview the proposed subscribers, and obtained from them applications for the Chippewa County company's service. These latter applications were secured on May

15 and 16, 1914. Several of the proposed subscribers appeared as witnesses at the hearing, and when questioned as to the reason for successively signing contracts for the service of two different companies, the replies of the witnesses were to the effect that they were very desirous of obtaining telephone service and would rather have the service of the Wisconsin Telephone Company than none, but that they preferred the Chippewa County Telephone Company's service, and upon finding that that company was ready to extend to them they no longer desired the Wisconsin Telephone Company's service. It was further stated that since nothing was done in the way of an extension to them in 1913, when the first contracts with the Wisconsin Telephone Company were signed, the witnesses were doubtful as to whether that company would ever be ready to reach them, and they were therefore the more ready to negotiate with the Chippewa County Telephone Company. Evidence was introduced to the effect that the Chippewa County Telephone Company was the first to occupy territory in the town of Anson and had the preponderating number of rural subscribers in that town; that the Wisconsin Telephone Company did not extend into any part of the town of Anson until the summer of 1913, beginning its line shortly before the passage of the statute restricting the extension of telephone lines and completing the line soon after the law became effective. The witnesses stated that they frequently desired to converse with persons located on the Chippewa County Telephone Company's line in Chippewa Falls and other points reached on that line, and especially with persons located on neighboring farms in the town of Anson which are supplied with Chippewa County service. There is no physical connection of any kind between the lines of the two companies.

Under such circumstances as are disclosed by the evidence in this case, it seems that the preference of the persons most concerned with the use of the extension should be given considerable weight. From the geo-

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graphical point of view, there is no choice between the two companies, since both would have about an equal length of line to construct. The territory is entirely new to both companies, so that neither will have to have its existing investment in any way impaired by the extension of the other. The preference of the proposed subscribers seems to be unanimously for the Chippewa County Telephone Company's line, and this preference was shown not only in their signing contracts and in a signed statement filed as an exhibit in the case, but by the oral testimony which was given by several of them and was subjected to cross-examination by the attorney for the Wisconsin Telephone Company. In a situation of this kind, consideration may well be given to some matters that may be quite extraneous to the issue in case an actual duplication of lines is contemplated; for instance, the preponderance of the subscribers of one company in the territory in question, the number and local importance of the points that can be reached without the use of toll lines, the relative length of time the two companies have been operating in the surrounding territory, and the business and social habits and needs of the individuals who are to use the new service, all are matters of some importance. This is especially true where, as in the present case, there is no physical connection between the lines of the two companies. In favor of the Wisconsin Telephone Company, it may be said that that company apparently displayed the greater diligence in securing the subscribers; and in many cases where two companies are competing for entrance into the same unoccupied territory, the enterprise of one company in soliciting business may give it a decided equitable advantage over another company. In this case, however, it is the opinion of the Commission that the consideration which, from the point of view of public convenience and necessity, favor the extension of the Chippewa County company's line to the subscriber in question, outweigh those in favor of the Wisconsin Telephone Company.

It is quite apparent that there is no necessity for the extensions of both the companies into the territory in

question. The preponderance of the evidence seems to favor the proposition that the service of the Chippewa County Telephone Company is likely to satisfy the public convenience and necessity better than that of the Wisconsin Telephone Company. Since both companies have complied with the legal requirements precedent to the extension by filing the notices required by law, the conclusion that public convenience and necessity require the service of the Chippewa County line necessarily results in the further conclusion that public convenience and necessity do not require the line of the Wisconsin Telephone Company.

The Chippewa County Telephone Company has suggested two alternative routes for its extension to reach the eight subscribers involved in the branch of the case now under consideration. One of these would parallel the Wisconsin Telephone Company's line for about half a mile and the Cadott Telephone Company for a mile and a half before reaching the point where it would enter new territory and take on subscribers of its own. Since no subscribers of the Cadott Telephone Company are to be disturbed as the result of the extension made in this case, it is highly preferable that so much paralleling of line should be avoided if another route is feasible. While the duplication of service rather than the actual paralleling of lines is the thing principally to be avoided in a construction of new telephone lines, the extension of a paralleling line from which no service is permitted to be given to the persons living along it is likely to lead to friction and dissatisfaction, while the actual incumbering of the highway and close proximity of wires is also likely to be unsatisfactory. The second route proposed by the Chippewa County company, therefore, is the one which seems to the Commission to be preferable. This route involves practically no paralleling of any line which is now furnishing local service to subscribers. The route thus proposed will follow the north and south road along or near which the proposed subscribers live, will then run west on

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the center lines of Sections 17 and 18 of the town, thence north a little less than a mile to a point on the boundary of Section 7, where the existing line of the Chippewa County will be joined.

Since the proposals of both the Wisconsin Telephone Company and the Chippewa County Telephone Company are considered to be amended so as to eliminate the persons residing along the line of the Cadott Telephone Company, no finding will be made with respect to them. These subscribers are the ones designated as follows in the map filed by the Wisconsin Telephone Company: Three in the north half and one in the southwest quarter of Section 29, two in the southeast quarter of Section 20, and two in the north half of Section 28. No finding need be made as to the four subscribers to whom, as already stated, the Wisconsin Telephone Company is to be permitted to extend, being those shown on the company's map in the southwest quarter of Section 19, the northeast and southwest quarters of Section 23, and the northeast quarter of Section 14; nor will any finding be made as to the three subscribers in the northern group and the eight in the southern group to whom the Chippewa County Telephone Company is to extend. As to such subscribers, authority vests in the respective companies by operation of law to proceed with the extensions as soon as the twenty-day limit fixed by the statute has expired.

We, therefore, find and determine, That public convenience and necessity do not require the extensions of the Wisconsin Telephone Company's line as proposed by said company in the town of Anson, Chippewa County, Wisconsin, so far as such extensions would reach subscribers located as follows: One in Section 17, one in the north half of Section 20, one in the southeast quarter of Section 29, one in Section 32, one in Section 16 and one in the southwest quarter of Section 28, in said town of Anson.

Dated this twenty-sixth day of May, 1914.

IN THE MATTER OF THE APPLICATION OF THE SEVASTOPOL
FARMERS TELEPHONE COMPANY FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY.

U — 315.

Decided June 2, 1914.

Public Convenience and Necessity—Invasion of Occupied Field—Inadequate Service.

Held: That in a case like the present, where inadequate service is shown to exist, but where nevertheless no steps have been taken to secure the exercise of the Commission's powers for the correcting of the inadequacy, the entrance of a new company into territory already occupied and fully covered by existing companies is ordinarily not required by public convenience and necessity.

The Commission was unable to find that public convenience and necessity required construction of the lines proposed.*

OPINION AND DECISION.

The application in this case relates to a proposed telephone system to be constructed north from Sturgeon Bay, Door County, Wisconsin, into the towns of Sevastopol, Egg Harbor and Jacksonport. The construction of this line was opposed by the Door County Telephone Company and by Matt Peffer, each of whom owns and operates rural telephone lines in the same towns. The hearing was held upon the matter at Sturgeon Bay on February 24, 1914, at which the applicant was represented by *H. M. Ferguson* and the objectors by *W. W. Wagener*.

The proposed new line is plainly intended as a substitute for the existing lines in the towns directly north of Sturgeon Bay. The route laid out by the applicant company involves the paralleling on the same highways of the two existing lines, for practically the entire length of the proposed new line. A few branches of the line would enter new territory for a mile or two but by far the greater portion of the new line would cover territory already served. At the time of the hearing, about thirty subscribers had been obtained for the line, and it was stated that about

* Editor's headnote.

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two-thirds of these were already subscribers on one or the other of the existing lines. The new company, like the two already in existence, would expect to have its switching done by the Wisconsin Telephone Company in the city of Sturgeon Bay, and have no central office of its own.

Of the two lines already existing in the northern part of Door County, that owned by the Door County Telephone Company is the more extensive. Door County consists of a long peninsula jutting out into Lake Michigan and, north of Sturgeon Bay, the peninsula is generally not more than seven or eight miles across. The Door County Telephone Company has six circuits, all grounded. Two of these run from Sturgeon Bay to the very end of the peninsula on each side, forming a complete circuit around the northern end of the county. The other four lines are shorter, and cover most of the intervening territory. The proposed line of the applicant would extend for some distance along each side of the peninsula and would cover considerable territory in the interior. The new company's lines on the two sides of the peninsula would parallel for their entire distance the lines of the Door County Telephone Company, and the lines in the interior of the county would also parallel for the most part the various interior lines of the Door County Telephone Company.

The lines owned by Matt Peffer extend from Sturgeon Bay to the northeast for perhaps sixteen miles with a few side branches. In general, they serve the interior of the peninsula rather than either of its shore lines, and they do not, except for short stretches, parallel the Door County Telephone Company's lines on the same highway. The proposed new line would, however, parallel the greater part of the Peffer line.

The organization of the new company and the proposed construction of a competing line appear from the evidence to be the result of a state of great dissatisfaction with the service of both the existing companies. The statements of various subscribers and former subscribers of the two companies describing the reasons for this dissatisfaction cover

many pages of testimony. The lines of both the existing utilities are grounded and the trouble due to cross talk and buzzing of the lines was stated to be particularly acute. There are a number of rural telephone lines running into Sturgeon Bay from the south, all centering in the Wisconsin Telephone Company's switchboard, and the evidence shows that cross talk from these southerly lines often makes trouble with those attempting to use the northern lines. Frequent crossing of wires, owing to their slack condition, was also mentioned. There was evidence to the effect that persons who had asked for the installation of telephones had been required to wait many months for service. There was also evidence that the lines would at times be out of use entirely for several days. In fact, at the time of the hearing, the Matt Pepper line had been out of service for three days. Mr. Pepper himself testified as to one of his lines:

"I gave up trying to give that line good service; I could not do it; I tried my best and I could not give them service."

The two objecting companies introduced evidence tending to show the care with which they attended to trouble on their lines. The Door County Telephone Company has two trouble men, one residing at Sturgeon Bay, and one in the northern part of the county, and they testified that it was their practice to attend to trouble as soon as possible after it was reported to them, going out usually on the same day, or the following day. On the Pepper line, trouble is attended to by Mr. Pepper himself or by an employee, depending on the location of the trouble. The local manager of the Wisconsin Telephone Company at Sturgeon Bay testified that whenever a line or an instrument was found by an operator to be out of order the fact was immediately reported to the proper person for correction of the trouble. Both Mr. Pepper and the officers of the Door County Telephone Company testified that the lines of their respective companies were about to be changed from grounded to metallic service, but the commencement of the work in this direction was being delayed pending the result of this case.

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The evidence seemed quite clearly to show a condition of unsatisfactory service on the part of both the companies at various times. How far the inadequacy of service is due to carelessness or neglect on the part of the companies, how far it may be ascribed to inattention by subscribers or even tampering with the lines, and how far it is the result of natural and unpreventable causes, is not clear. The entire situation with respect to the service of the two companies will bear investigation. If, as one witness suggested, the poles of the Door County Telephone Company are too small or are partly rotted away, or if the wires are too slack or connections are improperly made, these are physical difficulties that can be determined and remedied. If the situation is such as to require the metallicizing of the lines or other precaution to protect them from cross talk and other noises, there is no reason why these matters cannot also be attended to as soon as the exact situation has been determined and the requisite engineering knowledge has been applied to it.

All of these matters, however, do not seem to present a justification for the establishment of a new telephone system paralleling and competing with the existing lines and inevitably depriving them of a large amount of their business. The public utility law provides an adequate way of obtaining good service just as it provides a remedy for excessive rates. The existing companies have not evidenced any intention to abandon the business in which they are engaged or shown by their attitude that they are indifferent to the quality of service they give, or are willing to let the public suffer indefinitely from poor service. These companies have shown a disposition to improve the quality of service and to take care of trouble when it arises. If this is not done promptly enough or with sufficient skill to make the attempted improvement effective, it is the duty of the companies to mend their ways and the duty of this Commission to see that the service is actually made adequate.

The testimony presented at the hearing offers a sufficient basis for a general investigation on motion of the Commis-

sion of the service of the Door County Telephone Company and the Matt Peffer telephone line, and a notice of such investigation is being issued and sent to the parties with this decision. If it should develop that for any reason adequate service cannot be had from the existing utilities, there might then be occasion for the entrance of a new company into the field.

It is the opinion of the Commission that in a case like the present, where inadequate service is shown to exist, but no steps have been taken to secure the exercise of the Commission's powers for the correcting of the inadequacy, the entrance of a new company into territory already occupied and fully covered by existing companies is ordinarily not required by public convenience and necessity. The impairment of existing investments must have better justification than the existence of defects in service, which, for all that appears in the evidence, may be easily capable of correction when the proper steps have been taken.

Mention was made in the application of the Sevastopol Farmers Telephone Company of the excessiveness of the rates of the existing companies. Little evidence on this point was produced at the hearing. It appears that the rural rate of the Door County Telephone Company is \$18.00 and that of the Matt Peffer line is \$15.00 for residences and \$18.00 for business places. There is nothing in the evidence to indicate whether these rates are excessive or not, but if they were excessive the normal remedy would be a complaint to the Commission rather than the organization of a competing company.

For the reasons given the Commission is unable to find that public convenience and necessity require the construction of the lines proposed by the Sevastopol Farmers Telephone Company, and therefore no certificate will be issued.

Dated at Madison, Wisconsin, this second day of June, 1914.

IN THE MATTER OF THE APPLICATION OF THE WESTERN CRAWFORD COUNTY FARMERS' MUTUAL TELEPHONE COMPANY FOR AUTHORITY TO ESTABLISH A CHECKING STATION WITHIN THE CITY OF PRAIRIE DU CHIEN AND FOR CONNECTION OF SUCH STATION WITH ALL OTHER TELEPHONE SYSTEMS OPERATING IN SAID CITY.

U—318.

Decided June 9, 1914.

Public Convenience and Necessity—Extension of Lines Into Occupied Territory.

Upon petition for the installation of a checking station in Prairie du Chien, the petitioner contended that it had a right to install this station and also other telephone stations within the city, because it had, prior to the passing of Chapter 610, Laws of 1913, installed telephones in said city. It appeared that the telephones in question were used for the purpose of communicating with petitioner's rural subscribers and not for the purpose of communicating with each other within the city.

Held: That the petitioner has no right to increase the number of its telephone stations in the city of Prairie du Chien except upon a showing that public convenience and necessity require another telephone exchange within the city for the purpose of rendering local service.

The Commission found that in the instant case public convenience and necessity did not require the installation of such an additional exchange.

Installation of Checking Station.

Upon considering the question of the installation of a checking station to check and handle all traffic between the Union Telephone Company and the petitioner, the Commission found the present facilities to be such that all calls are, or readily can be, checked without additional expense or inconvenience.

Held: That the need of a checking station, as asked for by the petitioner, was not apparent.*

OPINION AND DECISION.

The substance of the petition is in effect that it has telephone lines extending in various parts of Crawford County which are connected with either of one of two lines which

* Editor's headnote.

run into the city of Prairie du Chien and they connect at a common station. It has several subscribers in the city of Prairie du Chien including the County Board of Supervisors which has a telephone installed in the court house. By virtue of an order of the railroad Commission the petitioner was obliged to connect its lines with the telephone exchange operating within the city of Prairie du Chien. Under the circumstances the petitioner desires to establish a checking station within said city for the purpose of supervising the joint business of the companies with which it is connected. Incidentally upon the hearing it was stated that the petitioner might have a right to establish this telephone as well as other telephones in the city of Prairie du Chien because of 'phones that it had installed in said city prior to the enactment of Chapter 610, Laws of 1913. This chapter amended Section 1797m-74 that as amended it reads as follows:

"No telephone exchange for furnishing local service to subscribers within any village or city shall be installed in such village or city by any public utility, other than those already furnishing such telephone service therein * * * except that any public utility already engaged in furnishing local service to subscribers within any city or village may extend its exchange within such city or village without the authority of the Commission."

In the instant case the few telephones of the petitioner located in the city of Prairie du Chien are used for the purpose of the subscribers communicating with the petitioner's rural subscribers and not for the purpose of communicating with each other within the city. The case is analogous to that of the *Citizens Telephone Company of Eau Claire against the Railroad Commission of Wisconsin*, 146 Northwestern 798. In the *Eau Claire* case occasionally the subscribers within the city of Eau Claire used the lines of the Chippewa County Telephone Company for inter-communication. The lines of the Chippewa company were primarily used by its Eau Claire subscribers for communicating with its rural subscribers and its subscribers in the city of Chippewa Falls. The Wisconsin Telephone Company maintained a local exchange within the city of Eau Claire and

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had approximately 2,000 subscribers. The Chippewa County Telephone Company had but 28 subscribers in the city of Eau Claire. The court says:

"The Chippewa company, it appears, solicited subscribers in Eau Claire for out of town business, and the subscribers testify they made their subscription upon this understanding. * * * It is evident that the local service actually rendered at Eau Claire was in the nature of an occasional accommodation to the subscribers in the city and was incidental to the rural and toll line service of the company. The evidence given by subscribers tends strongly to support this conclusion. We are persuaded by the evidence in the record that the Chippewa company at no time operated a local telephone exchange in the city of Eau Claire for furnishing telephone service to subscribers in the city within the meaning of the provision of Section 1797m-74."

Upon the authority of the *Eau Claire* case, it is clear that the petitioner has no right to increase the number of its telephones in the city of Prairie du Chien except upon a showing that public convenience and necessity require another telephone exchange within the city for the purpose of rendering local service. As the petitioner's subscribers have now the means of communicating with the subscribers of the local exchange in the city, there is no necessity for any citizen to subscribe to petitioner's system as he can obtain communication with petitioner's subscribers through the local exchange.

Turning to the question of installing a checking station in the city of Prairie du Chien, to be used to check and handle all traffic between the Union Telephone Company and the Western Crawford County Farmers' Mutual Telephone Company, we shall consider briefly the situation disclosed by the investigation. It appears that at the present time there are only two lines within the city limits where checking would be required. One of these lines is a clear line to Eastman. The other is a clear line to Bridgeport. The line between Prairie du Chien and Eastman is jointly owned, that is, that portion of the line between the city limits of Prairie du Chien and the Union Telephone Company's exchange is owned by the latter company, and that portion of the line in the rural districts is owned by the Mutual com-

pany. The line between Prairie du Chien and Bridgeport is the property of the Tri-state Telephone Company and is leased to the Union Telephone Company. Besides these two lines, the Mutual company has one line entering Prairie du Chien with the station located in the court house. This same company also has a line extending from Eastman to the city limits of Prairie du Chien which has between 30 and 40 subscribers. The regular service offered by the Union Telephone Company is continuous throughout the night and day; that of the Mutual company is available from 6 A. M. to about 8 or 9 P. M. The rate between Bridgeport and Prairie du Chien is 5 cents either outgoing or incoming on either exchange. The rate charged by the Union Telephone Company between Eastman and Prairie du Chien is 3 cents except to parties who pay a switching fee, in which case no charge is made. The incoming and outgoing calls between Prairie du Chien and Bridgeport are checked both at the originating and terminating station. The operators at both stations compare checkings each day. The operator at Bridgeport is employed and paid by the Mutual company. The Prairie du Chien-Eastman calls outgoing from Prairie du Chien are checked by the Union company but are not checked by the Mutual company, but could be so checked if a check is desired. The Prairie du Chien-Eastman calls incoming at Prairie du Chien are checked by both companies. The operator at Eastman is an employee of the Mutual company. The operators of both companies compare checkings every day. Under the circumstances it is apparent that the present facilities are such that all calls are, or readily can be, checked without additional expense or inconvenience. The need of such a checking station as that asked for by the Mutual company is, therefore, not apparent. However, should it occur in the future that some loaded line be extended to the city of Prairie du Chien and be connected to the Union Telephone Company's switchboard, such extended line being a part of the Mutual company's system, such a checking station might then become necessary. Some arrangement would then have to be made whereby

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calls on such a line could be classified. As the checking of traffic between the two companies is now, or readily can be, satisfactorily accomplished without any additional facilities or expense, it appears that the location of a checking station within the city of Prairie du Chien would be superfluous and cause unnecessary expenditure of money. For the reasons stated the petition will be dismissed.

Now, therefore, it is ordered, That the petition be, and the same is, hereby dismissed.

Dated at Madison, Wisconsin, this ninth day of June,
A. D. 1914.

INTERSTATE COMMERCE COMMISSION.

REGULATIONS TO GOVERN THE RECORDING AND REPORTING OF ALL EXTENSIONS AND IMPROVEMENTS OR OTHER CHANGES IN THE PHYSICAL PROPERTY OF EVERY COMMON CARRIER.

Valuation Order No. 3.

Dated June 25, 1914.

ORDER.

The subject of a uniform system for reporting investment in the physical property of every common carrier subject to the provisions of the Act to Regulate Commerce being under consideration, the following order was entered:

It is ordered, That the regulations to govern the recording and reporting of investment in physical property of every common carrier subject to the provisions of the Act to Regulate Commerce, which are set out in printed form to be hereafter known as first issue, a copy of which is now before this Commission, be, and the same are hereby, approved; that a copy thereof duly authenticated by the Secretary of the Commission, be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Division of Valuation; and that each of said copies so authenticated and filed be deemed an original record thereof.

It is further ordered, That the said regulations be, and the same are hereby, prescribed for the use of the afore-said carriers in the preparation of reports of investment in physical property required by the Commission to be filed with it in accordance with Section 19a of the Act to Regulate Commerce; that each and every such carrier and each and every receiver or operating trustee of any such carrier be, and is hereby, required to prepare and furnish to the Commission reports of investment in physical property in conformity therewith; and that a copy of said first issue be sent to each and every carrier affected thereby and to each and every receiver or operating trustee of any such carrier.

It is further ordered, That each and every carrier of the class hereinbefore described and referred to and each and

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every receiver or operating trustee of any such carrier whose property is inventoried as of June 30, 1914, shall be, and is hereby, required to file with the Commission, and on forms which will hereafter be prescribed and served upon the carrier as a part of this order, reports for the fiscal year ending June 30, 1915, and for each succeeding fiscal year thereafter; that carriers whose property is inventoried as of June 30 in any year subsequent to 1914 shall be, and are hereby, required to render on the forms prescribed for that purpose reports for the fiscal year immediately following the close of the fiscal year at June 30 as of which the property of such carriers is inventoried and for each succeeding fiscal year thereafter: *provided*, That each and every carrier of the class described and referred to herein and whose property is not inventoried as of June 30, 1914, and each and every receiver or operating trustee of any such carrier shall be, and is hereby, required so to keep the accounts and records of the carriers between June 30, 1914, and the date as of which the property of such carriers is inventoried that reports in accordance with the regulations herein approved and prescribed can be prepared therefrom in the discretion and at the direction of the Commission. The Commission will notify each carrier in writing of the year as of which its property is to be inventoried, and this date shall govern in the application of this order.

It is further ordered, That July 1, 1914, be, and the same is hereby, fixed as the date on which the said first issue shall become effective.

SYNOPSIS.

I. General.

1. Intent.

II. Records to be kept by common carriers.

2. Authorities.

3. Detailed records of cost.

III. Reports to be filed by common carriers.

4. Reports of completed work.

5. Reports of uncompleted work.

IV. Reports shall be supported by maps or plans.

6. Reports of extensions.

7. Reports of improvements or other changes.

I. GENERAL.

1. *Intent.*

In order that the Interstate Commerce Commission may investigate, ascertain, report, and record the value of property of every common carrier, subject to the provisions of the Act to Regulate Commerce, as such property may be extended, improved, or changed, after June 30, 1914, it is essential that certain records shall be prepared and kept by the carriers in their offices and that certain reports shall be filed with the Interstate Commerce Commission. It is the intent of these regulations to prescribe a uniform method of recording and reporting the investment in extensions, improvements, or other changes, including retirements, of physical property.

II. RECORDS TO BE KEPT BY COMMON CARRIERS.

2. *Authorities.*

Each extension and improvement or other change in the property of a common carrier shall be covered by an *authority* setting forth clearly and explicitly the general character and location, quantities and amounts involved in the extension and improvement or other changes. These *authorities* shall be issued by executive or other responsible officers of carriers in numerical order and separately for owners, and states, territories, and the District of Columbia.

3. *Detailed Records of Cost.*

The records of common carriers, covering investment in extensions, improvements, or other changes, including retirements, in the physical property, shall be kept by jobs, and separately by owners, and states, territories, and the District of Columbia in such complete detail as to units and quantities of the material and labor entering therein so as to show a unit analysis of their cost.

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III. REPORTS TO BE FILED BY COMMON CARRIERS.

4. *Reports of Completed Work.*

Reports of authorized jobs which have been completed shall be made within six months after the completion thereof upon special forms which will be later prescribed by the Commission. Such reports shall be summarized showing distribution by primary accounts in accordance with the Commission's classifications. Reports and summaries shall be made by jobs, and separately by owners, and states, territories, and the District of Columbia. The completion reports for such jobs as extend over two or more fiscal years shall be made in full detail for the entire period covered by the work and the amounts expended in each fiscal year shall be stated in summary form.

5. *Reports of Uncompleted Work.*

Reports of authorized jobs which have not been completed by June 30 of each year shall be made in summary form only, showing the cost thereof to said June 30 and distributed by accounts in accordance with the Commission's classifications. Separate summaries shall be made by owners and states, territories, and the District of Columbia, and filed with the Commission not later than six months after said June 30.

IV. REPORTS SHALL BE SUPPORTED BY MAPS OR PLANS.

6. *Reports of Extensions.*

Reports of extensions shall be accompanied by such maps, profiles, plans, or diagrams as are required by the Commission's specifications applicable to such extensions.

7. *Reports of Improvements or Other Changes.*

Reports of improvements or other changes, including retirements, shall be accompanied by such maps, profiles, plans, or diagrams as may be necessary to show their general character.

PART II.
COMMISSION ORDERS, RULINGS AND DECISIONS
OF INTEREST TO TELEPHONE AND TELE-
GRAPH COMPANIES.

[Note: Owing to lack of space, only summary statements of many of the decisions involving points of interest are printed in this Leaflet.— Ed.]

ARIZONA.

Corporation Commission.

ARIZONA CORPORATION COMMISSION *v.* GRANITE SPRINGS
WATER COMPANY, INC., C. W. VAN DYKE AND I. A. VAN
DYKE.

Docket No. 69, Sub. 1.

Decided May 1, 1914.

Reasonable Rates.

The following points of interest, among others, appear in the opinion of the Commission:

Valuation of Real Estate.

Real estate was taken at the value placed upon it by local property owners and real estate dealers.

Tools.

" * * * tools are not properly includible in a valuation for rate making but should be taken care of by allowing the depreciation as a part of the operating expenses; * * * the expense of their replacement coming at frequent intervals * * *."

General Contractor's Profits — Piecemeal Construction.

The Commission's engineer included allowances for general contractor's profits and for piecemeal construction, the actual construction having been decidedly of that character.

Allowance for "Overhead."

Fourteen per cent. for "overhead" was added to the inventory value less real estate, stationery and printing, and stores and supplies. This percentage was composed of:

Engineering and supervision	6 per cent.
Interest during construction	5 per cent.
Omissions, contingencies, legal expense, cost of organization	3 per cent.

Intangible Values.

"Due regard is given to the fact that the company is but just emerging from the formative period of its existence, and the cost of the physical equipment in relation to the total cost might differ from such relation when sufficient time has elapsed to put the plant on an established basis."

Going Value.

"Commissions and courts have recognized a difference between the value of a water system in operation and the value of a system comprising identical physical equipment but without consumers or business; in other words, the increment of value corresponding to the cost of establishing a system as a 'going concern' the same being entirely disassociated from any element of 'good will.'"

\$1,613 for going value was added to the cost of reproduction (\$36,770) and \$1,458 to the present value (\$33,249), which totals included the allowance of 14 per cent. for "overhead," but excluded real estate, stationery and printing, and stores and supplies.

Working Capital.

\$3,500 was allowed for working capital, \$2,000 to cover delays in the prompt payment of bills by consumers and \$1,500 for a bank balance and the amount necessary to conduct business for thirty days.

Allowance for Depreciation.

The annual allowance for depreciation was fixed on a straight line basis at 3.5 per cent. of the value of the depreciable property.

Rate of Return.

The Commission held that a reasonable rate of return under the local conditions should be not less than 10 per cent. and allowed 10 per cent. on the present value of the tangible and intangible property.

Reduction of Operating Expenses — Methods of Operation.

"The water company should reduce operating costs. In event any increase of operating expenses results from rates charged by the electric company for power, an order of this Commission will issue directing a change in the operation from electric energy to distillate."

Discontinuance of Service for Non-Payment of Bills — Expense of Discontinuance and Resumption of Service.

The Commission held that the expense occasioned by the discontinuance of service in order to enforce the payment of bills should be borne by the consumer causing the same, and established a charge of \$1.00 for the re-

sumption of service in such instances. The company was authorized to discontinue service when bills were not paid by the twentieth day of the month following the month for which the bill was rendered.

Elimination of Meter Rentals.

The Commission expressed an unwillingness to permit a meter rental charge and eliminated this charge from the schedule.

Service Connections.

The schedule prescribed by the Commission provided that no charge should be made "for connections from the water main to the property line. This expense is to be paid by the water company and charged to the proper construction account."

Consumer's Deposits.

The schedule provided that the company might demand a consumer's deposit not to exceed \$5.00 for residence service and \$10.00 for business service, 8 per cent. interest to be paid thereon.

Cancellation of Existing Contracts.

The Commission's order provided that all existing contracts not in conformity therewith should be cancelled and annulled thereby.

Denial of Applications for Rehearing and Suspension of Order.

On May 15, 1914, the Commission denied the respondents' application for a rehearing and on May 20, 1914, the respondents' application for suspension of the order was denied.*

I. E. HUFFMAN, MAYOR, *et al.*, v. TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY.

Docket No. 4.

Dated May 8, 1914.

Approval of Compromise between Parties Increasing Rates Fixed by Commission — Rates and Rules for Street Lighting Service.

SUPPLEMENTARY ORDER.

This Commission on the ninth day of July, 1913, issued its opinion and order† in the above entitled case, making

* Editor's syllabus of decision.

† Printed in Commission Leaflet No. 21, at page 725.— Ed.

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certain findings therein. Subsequently the defendant brought suit in the Superior Court of Maricopa County, Arizona, praying that said order be vacated and set aside, and alleging the same to be unjust and unfair, and that the application of the rates and charges prescribed in said order would occasion an unlawful confiscation of the defendant's property.

Pending such litigation and prior to any trial or hearing had thereon, the complainant and defendant filed with this office a joint agreement compromising all differences relative to the issues presented to the consideration of the Commission in the above entitled case and further agreeing that the cause pending before the said Superior Court be dismissed by the Tucson Gas, Electric Light and Power Company.

Under the terms and provisions of said agreement, the following rates are suggested as equitable in the classification shown therein:

LIGHTING RATES.

For a monthly consumption of 8 kw. h. or less.....	\$1 00
For the first 100 kw. h. in any one month.....	\$.12 per kw. h.
For the next 200 kw. h. in any one month.....	.11 per kw. h.
For the next 200 kw. h. in any one month.....	.09 per kw. h.
For the next 500 kw. h. in any one month.....	.06 per kw. h.
All in excess of 1,000 kw. h. in any one month.....	.05 per kw. h.

Said agreement carries a provision that said schedule of rates shall not be raised under any circumstances whatsoever, and further provides that the defendant company shall supply the city of Tucson fully equipped, and shall maintain, all street arc lights now or to be hereafter used in said city for street lighting purposes, at such places as the same now are or may hereafter be placed by the governing authority of said city, of the same or similar type of street arc light as that now prevailing, and shall supply electric energy for lighting the same for a period of five years from the date of said agreement at the rate of \$76.00 per annum for each street arc light so supplied and maintained.

The city of Tucson has required this defendant and its associated companies to make large expenditures of money in said city for paving charges and cost of moving poles and wires and the interests of both complainant and defendant in the above cause seem best conserved by the approval by this Commission of the agreement in question and the dismissal of the case before the Superior Court.

It is, therefore, ordered, That the original order herein be amended to conform with the terms and provisions of that certain agreement made between the parties to this cause, and that said agreement is hereby approved, until the further order of this Commission in the premises made and provided.

This order shall be deemed in full force and effect from and after the first day of May, 1914.

Dated at Phoenix, Arizona, this eighth day of May, 1914.

MASSACHUSETTS.

Board of Gas and Electric Light Commissioners.

PETITION OF THE HAVERHILL GAS LIGHT COMPANY.

Decided June 8, 1914.

Issuance of Capital Stock.

Application to issue stock for the purpose of defraying past and future expenditures for additions and improvements, and increasing working capital.

It appeared that the entire plant has been recently reconstructed and enlarged.

Engineering and Supervision.

It was objected that the expenditure for outside engineering and supervision was unnecessarily large in view of the character and compensation of the company's management.

Held: That while the Board is not impressed with the reasonable necessity for the full amount of the expenditure for engineering and supervision, yet it must be recognized that the reconstruction of a gas plant and the installation of a new type of apparatus on land restricted in area, coupled with the necessity of keeping the old works in operation, calls for unusual care and engineering skill.

Both points of view were taken into account by the Board in determining the amount of stock to be authorized.

Capitalization and Reconstruction — Investment in Plant out of Income.

It was further objected that many items of expenditure were in the nature of alterations or reconstruction of existing property and had added little or nothing to its value.

It appeared that prior to the reconstruction only \$75,000 had been invested by the stockholders, the plant having been maintained and extended out of earnings.

Held: That if prior to the reconstruction stock had been issued to the entire value of the plant, the investment represented by the stock would have become impaired to the extent of the accrued depreciation manifested in the necessity for reconstruction and provision out of future income would have been necessary to make good this impairment. As a matter of fact, ample provision against such a contingency has been made in the price collected and the maintenance and extension of the plant out of income, and the consumers, having thus contributed through the rates paid,

[Mass.]

should not be required to contribute again. Consequently, the cost of the new construction should be met by new capital rather than again out of income. The company's policy in this respect has been of mutual advantage to it and to consumers, and permits the capitalization of the entire cost of the new construction without injustice to anyone.

Issuance of Stock for Working Capital—Provision out of Surplus or through Temporary Indebtedness Preferable.

With respect to the provision of working capital by the issuance of stock,

Held: That the amount of working capital which is needed varies largely as between different companies and also from time to time for the same company, and it is extremely difficult to make a rule applicable to companies generally as to the amount necessary:

That, if possible, provision for working capital should be made without the creation of a permanent liability such as inheres in capital stock, so that as the amount needed varies, the liability may vary to the same extent;

That the working capital of established and prosperous companies having an unquestioned surplus should be provided out of surplus or through temporary indebtedness, rather than by the issuance of capital stock.

For these reasons no stock was authorized for working capital.

Selling Price of Stock to be Issued — Sale to Public.

The company's directors had fixed par as the price at which the new stock should be offered to the stockholders. The company's stock had not been on the market since 1899, nor had any dividends been declared since that time. The company had been engaged in a protracted controversy as to the rate to be charged and its earning power under the rate finally accepted, was problematical.

Held: That the amount of money necessary to be raised will obviously require the issuance of several times the amount of capital stock now outstanding, which will result in a corresponding decrease, emphasized by the change in price, in the amount of divisible profits per share.

The Board's order provided that any of the shares thereby authorized to be issued at par which should not be subscribed for by the stockholders entitled to take them, should be offered for sale to the public.*

DECISION AND ORDER.

This is an application by the Haverhill Gas Light Company for the approval of an issue of additional capital

* Editor's headnote.

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stock of the par value of \$700,000 for the purpose of defraying the past and future expenditures of the company in and in connection with additions, extensions and improvements to its plant and property, and increase of working capital.

After due notice public hearings were held by the Board upon this application, at which the company was represented by its officers and counsel, the city of Haverhill by its solicitor, and certain customers of the company by counsel. During the course of the hearings the company waived so much of its application as related to certain past and future expenditures of an unusual character not concerned with any additions to physical property, and amounting to about \$100,000. In consequence the application stands for the approval of stock sufficient to raise a little over \$600,000.

The present management assumed control at some time in the fall of 1909. On June 30, 1909, the company owed but \$5,500 in notes then outstanding, and this item represented the balance of the purchase price of its Essex Street land. Between that date and March 31, 1914, the present management has reconstructed the gas works and enlarged their capacity, erected a million cubic foot holder and made considerable extensions of the distributing system. The net additions to the plant accounts because of these expenditures have somewhat exceeded \$371,000. There has at the same time been a substantial increase in the company's current assets. On March 31, 1914, it had outstanding promissory notes to the amount of \$438,500. The present management has also taken active steps to increase the company's business, which have resulted in a very substantial increase in output.

The question was raised at the hearings that certain of the expenditures made by the company were of a character and amount inappropriate for capitalization. This contention was, first, that included in them are many items, substantial in amount in the aggregate, which are in the nature of alterations or reconstruction of existing property

and have added little or nothing to its value, and, second, that the expenditure for outside engineering and supervision of this work was unnecessarily large in view of the character and compensation of the company's management.

Taking up the second contention first, while the Board is not impressed with the reasonable necessity for the full amount of the expenditure for engineering and supervision made by the company in this work, yet it must fairly be recognized that the reconstruction of a gas works and the installation of a new type of apparatus on a piece of land restricted in area, coupled with the necessity of keeping the old works in operation until the new works were ready, called for unusual care and engineering skill. Both considerations have been taken into account in the amount of stock which the Board has authorized.

In regard to the first contention, it is to be remembered that all of the company's outstanding stock amounts at par to \$75,000. Since 1872 it has never sought, prior to this application, to increase its capital. Assuming that this amount of \$75,000 represents, as it does, all that the stockholders ever paid into the corporation from their individual funds it may be conceded that their investment has been more than kept good by expenditures upon the plant and additions thereto made out of earnings. It has been urged that when the present management assumed control in 1909 the company's surplus was very large, meaning by surplus the excess of its assets over its debts and stock. It is quite true, that by the company's method of accounting, such was the fact. It is also true that a substantial part of what was then termed "surplus" was represented not by any form of quick assets but entirely by plant. So long as this plant was in actual use by the company and was suitably adapted therefor, it had value. But very soon after the date named it became apparent that its business necessities required the virtual abandonment of much of the old works, and the construction in their place of new works of a different type and greater capacity. If capital stock had theretofore been issued

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for the entire plant, it would mean that no provision for the depreciation then manifest had been made. The capital stock would have thereby become impaired and provision to make this impairment good out of future income would have been necessary. Such, however, was not the fact in this corporation. Ample provision against such a contingency had been regularly made in the price for gas and the funds so acquired had not been dissipated in dividends or otherwise. Consumers, having once contributed in this way for this purpose, should not be required to contribute again for the same thing. The cost of the new construction should come wholly out of new capital rather than again out of income to be reflected in the price of gas. This is the only logical outcome of the policy pursued in the past by this company, of which the very limited issue of stock is a conspicuous demonstration. This policy has been of mutual advantage to company and consumers, and permits without injustice to any interest involved the capitalizing of the entire reasonable cost of the new work.

In addition to the expenditures already made by the company, the estimated cost of additions to be made to its plant, and chiefly to its distribution system in Haverhill during the present year, is about \$52,000. It has also decided upon an extension of its mains into the towns of Groveland and Merrimac, and has received the necessary authority and permits therefor. These extensions are estimated to cost \$36,848 and \$44,810, respectively.

Included in the application was a substantial amount for the cost of additions to quick assets or working capital. Hitherto the company has never found it necessary to issue stock for this purpose. Its working capital has always been small and it may be conceded that it may wisely be now increased. It is extremely difficult to make a rule applicable to companies generally as to the necessary amount of working capital. It will doubtless vary largely in different companies and from time to time in the same company, dependent upon its immediate policy and purpose, that is to say, according to the particular work which

it ought to do or may have in hand. This very liability to variation of working capital impels to conservatism in the issuance of stock for account of it. If reasonable provision for it can be made without the creation of a permanent liability, such as inheres in capital stock, so that, as working capital is reduced the liability therefor may disappear to the same extent, every permanent interest involved will be conserved. In established and prosperous companies with an unquestioned surplus, the Board has been of the opinion that working capital should be provided out of surplus or temporary debt rather than by the issue of new stock, because under such conditions the necessity for such issue is not apparent. For these reasons no provision for this item is made in this decision; but, if experience shall later prove that such reasonable necessity exists, the request for the same can then be renewed.

The directors of the company have fixed the price at which the new shares shall be offered to the stockholders, at par. The law requires that the vote of the Board as to the amount of stock reasonably necessary shall be based on the price fixed by the directors "unless the Board is of opinion that such price is so low as to be inconsistent with the public interest, in which case it may determine the price at which such shares may be issued."

The stock of this company has been withdrawn from the market since its acquisition by the Haverhill Gas Securities Company in 1899. The company has not declared or paid any dividends since that year, although profits were ample for the purpose, and between 1899 and 1909 loans were annually made to the Securities company to enable the latter to pay interest on its bonds. During substantially all of this period the company has been engaged in litigation, only recently voluntarily ended, in which there has been involved a question as to the price which it might be allowed to charge and, as a resultant, the amount it might be able to earn and distribute in dividends. This protracted controversy and the nature of the dispute makes its present condition abnormal, and it now remains to be

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seen what the company can demonstrate as its earning power under the rate which it has accepted and which has been so long in controversy upon the claim that it was too low to allow a reasonable return. The amount of money to be raised will obviously require, on any theory, the issue of several times the amount of capital stock now outstanding, with a corresponding decrease, emphasized by the change in price, in the amount of divisible profits per share.

The following is, therefore, adopted:

ORDER.

On the petition of the Haverhill Gas Light Company, pursuant to the provisions of Section 24 of Chapter 109 of the Revised Laws, for the approval of an issue of additional capital stock of the par value of \$700,000 for the objects named in said petition, after public notice and hearing, it being deemed by the Board that the amount of stock hereinafter named is reasonably necessary for the purpose for which such issue is authorized,

It is ordered, That the Board hereby approves of the issue by the Haverhill Gas Light Company, in conformity with all the requirements of law relating thereto, at the price of \$50.00 a share, as determined by its directors, of 10,200 shares of new capital stock of the par value of \$50.00 each, the proceeds of said stock to be applied to the following purposes and to no other, to wit: The proceeds of 7,527 shares to the payment and cancellation of an equal amount of the obligations of the company represented by its promissory notes outstanding on March 31, 1914; the proceeds of 1,633 shares to the payment of the cost of the extension of its distribution system in the towns of Groveland and Merrimac; and the proceeds of 1,040 shares to the payment of the cost of other additions to plant made subsequent to said thirty-first day of March.

And if any shares shall remain unsubscribed for by the stockholders entitled to take them under the provision of law relating thereto,

It is further ordered and determined by the Board, That all such shares shall be offered for sale at some suitable place in the city of Boston, and that notice of the time and place of such sale shall be published in the Boston Daily Advertiser and the Boston Evening Transcript, newspapers published in the city of Boston, and in the Haverhill Gazette, a newspaper published in the city of Haverhill.

CAMBRIDGE PETITION.

Decided June 18, 1914.

Reduction in Electric Rates.

Complaint by the Mayor of Cambridge as to the price charged for electric light and power, requesting a reduction in the maximum net price of 10 cents to commercial customers and in the rates for street lighting.

Rate of Return — Authorized Stock and Market Value of Stock as Bases for Computation.

The company contended that the return allowed should be based on a valuation of \$200 per share for its outstanding capital stock for the reason that many of its stockholders had purchased their stock at that price.

Held: That with respect to a company so ably and conservatively managed, it is not necessary to consider seriously the propriety of a 10 per cent. dividend;

That there is a wide difference between permitting the company to earn what is, under all the circumstances, a reasonable dividend on its authorized capital, and acknowledging that, as a matter of right, it is entitled to earn hereafter not less than some certain definite return on the full market value thereof;

That the anti-stock-watering statute, which in effect requires that new stock be offered for sale at the market value, was intended to limit the dividend burden and to benefit the corporation rather than the stockholders, whereas the basing of the return on the market value would make the law operate to capitalize against the public the earning power under existing conditions, and would convert the security resulting from an amount of capital low in relation to the volume of business, into a menace to the future stability of the company, thus tending to subvert the manifest purpose of the public policy expressed in the law;

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**Factors Contributing to Company's Prosperity — Reasonableness of
Requiring Reduction.**

Held: That owing in part to the skill and prudence with which the company's affairs have been managed and to voluntary reductions in price which have materially advanced its prosperity, and in part to the growth of the city, the company's income is more than sufficient to provide for operating expenses, depreciation and a liberal return, and this fact in itself is a forcible reason why the reduction in price may reasonably be made.

**Benefits of Reduction to Accrue to City and to Consumers Paying Maximum
Price.**

Held: That the advantage of any reduction should accrue to the city and to other consumers who must, in the nature of things, pay the maximum price rather than to consumers to whom service must be rendered at less than the maximum price in order to secure their business.

**Effect on Demand for Service of Reducing Rates for Street Lighting — Costs
Peculiar to Street Lighting — Rates Determined by Load
Factors — Discrimination against City.**

Held: That although a reduction in price almost inevitably creates an increase in demand, this may not be true of street lighting and a decrease in revenue corresponding to the decrease in rates may result;

That although certain elements of investment and maintenance are peculiar to street lighting as distinguished from commercial business, the street lighting system has perhaps the best load factor, and the Board believes that the company has given too great weight to the former consideration and too little to the favorable character of the load factor;

That since differences are made in the prices to private consumers corresponding to the differences in their load factors, the city should be entitled to like consideration with respect to street lighting, and, in any event, there is no apparent reason why the city should be charged more than the maximum net price charged private consumers.

The Board recommended certain reductions in the rates for street lighting and the reduction of the maximum net price to commercial customers to 9 cents, holding that under the prices recommended, the company's earnings would be ample to cover all reasonable operating expenses, including a proper allowance for depreciation and a fair return upon the property which it is actively and necessarily employing for the public convenience.*

DECISION AND RECOMMENDATION.

This is a complaint in writing under the provisions of Section 34 of Chapter 121 of the Revised Laws by the

* Editor's headnote.

Mayor of the city of Cambridge of the price of electric light sold and delivered by the Cambridge Electric Light Company.

After due notice public hearings were held upon this complaint at which the Mayor was represented by the City Solicitor and the company by its counsel and officers.

This company supplies electricity in Cambridge, and to the municipal plant of Belmont under contract in force until 1916 at 3.6 cents per kilowatt hour measured at the town line. In addition, the company furnishes lamp renewals to the commercial customers of the town at the rate of $1\frac{1}{2}$ cent for each kilowatt hour sold by the town to such customers. With a maximum net price of 10 cents a kilowatt hour the company offers a variety of differential prices to its customers in Cambridge, both for light and power and for off-peak loads, varying according to the respective customer's use of electricity, either in amount or duration. It does not seem necessary for the purposes of this decision to set forth these rates in detail.

The company has not had a written contract with the city with respect to street lights since 1905. On June 30, 1913, the company had installed the street lamps and was charging the respective prices set forth in the following schedule:

605 Mazda	50 watt lamps on goosenecks	at \$20 65 a year
20 Mazda	50 watt lamps on bridges	at 20 37 a year
111 Mazda	50 watt lamps on ornamental poles	at 23 57 a year
6 Mazda	60 watt lamps on goosenecks	at 13 98 a year
104 Mazda	75 watt lamps on bridges	at 23 48 a year
12 Mazda	75 watt lamps on ornamental poles	at 26 72 a year
1 Mazda	100 watt lamps on gooseneck	at 29 83 a year
147 Mazda	100 watt lamps in clusters of 3.	at 70 49 a year
1 Mazda	125 watt lamp	at 36 55 a year
528 Mazda	250 watt lamps	at 59 86 a year
35	two-light ornamental fixtures, 250 watt lamps, one operated until midnight, and one all night, at \$82.44.	
54	luminous magnetite arc lamps, 6.6 amperes and 530 watts, at \$108.50 a year operated all night and every night, and at \$78.30 operated every evening until midnight.	

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All of the incandescent lamps, save the six 60 watt lamps, are lighted all night and every night, or about 4,000 hours a year. Approximately, one-half of the arc lamps are lighted all night and the other half until midnight. The six 60 watt lamps are lighted until 10 o'clock in the evening. The 100 watt lamps in clusters of three and the 125 and 250 watt lamps are installed in the old arc lamp hoods. The installation of magnetite lamps was begun in June, 1913, taking the place of some of the larger size incandescent lamps, and since that date their use has been considerably extended.

The prices for the incandescent lamps are based on initial prices of \$25.00 and \$28.00, respectively, for 50 and 75 watt lamps for not less than 459 lamps in all, with a reduction to \$20.65 and \$23.65 a year, respectively, for 740 lamps and over. For 100, 125 and 250 watt lamps the initial prices are \$29.83, \$24.55 and \$57.36, respectively. All of these prices are for lamps installed on goosenecks on line poles. For lamps installed in arc lamp casings or cluster balls and suspended over the roadway, the "fixed charge" hereinafter described is increased from \$1.00 to \$1.50, according to the size of lamp. An additional \$1.00 is added to the "operating charge" hereinafter described, where lamps are installed in globes. Where lamps are installed on ornamental posts, 20 per cent. is added to the "fixed charge." For ornamental lighting there are deductions from the prices enumerated corresponding to the yearly income a hundred feet of street lighted, ranging from 2 per cent. for \$80.00 to 6.6 per cent. for over \$100.

These prices are made up of a "fixed charge" and an "operating charge." The "fixed charge" varies with the type and size of the lamp, though not in strict proportion to the size. The "operating charge" varies, dependent upon the type and size of the lamp and the number of hours it is lighted, and the amount of electricity theoretically necessary for the operation of the lamp. The variation in "operating charge" ranges from an average of a little over 5 cents a kilowatt hour for the smallest

size to a little over $3\frac{1}{2}$ cents for the largest size incandescent lamp in use, and to a little over 3 cents for the all night magnetite lamps. From the foregoing it will be seen that the schedule of prices is unusually complex.

This company serves a densely populated and compact territory, having a considerable amount of manufacturing and other industries. For a number of years its power business has increased rapidly until it exceeds, both in connected load and output, its lighting business. With the increase in its business, the company has enjoyed a high degree of prosperity. On June 30, 1913, it had a plant with a book value of \$1,235,529 and other assets of \$169,861, against which there were outstanding a capital stock of \$850,000 and debts of \$42,333.44. After the company was organized in 1886 it began paying dividends in 1890 and paid regularly 6 per cent. thereafter until 1905, with $7\frac{1}{2}$ per cent. one year. In 1905 its dividend was raised to 8 per cent., and in the remaining years prior to 1909 it paid 10 per cent. The following table exhibits its net earnings and their disposition during the five years ending June 30, 1913.

	<i>Net earnings available for dividends, etc.</i>	<i>Interest</i>	<i>Dividends</i>		<i>Balance available for depreciation, etc.</i>
			<i>Amount</i>	<i>Rate (per cent.)</i>	
1909	\$152,208	.....	\$78,500	10	\$73,708
1910	163,954	\$1,073	160,000	20	2,881
1911	176,045	378	82,500	10	93,167
1912	198,604	1,147	187,000	22	10,457
1913	189,618	952	102,000	12	86,666

At the hearings it was conceded by the city's representatives that the company had been managed with skill and prudence, but they urged that it could well afford to reduce and should reduce its maximum net price for electricity to commercial customers and its prices to the city for street lights. There was some discussion with respect to certain of the differential prices offered by the company, especially those for power, but it was not claimed that the Board should go further than to fix the maximum

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net price. No questions were raised over the company's operating costs. Neither side offered a valuation of the company's property, although certain estimates were offered by the city with respect to its probable value as a basis for the return. It was also urged in behalf of the company that, inasmuch as certain increases of stock had been taken by the stockholders at \$200 a share, all of the outstanding stock should be reckoned at that price as a basis for the return.

While the Board has taken into account the probable value of the company's property, it has not deemed it necessary to make a detailed and exhaustive valuation for the purposes of this decision. Nor is it willing to concede the contention of the company based upon the issue price of the stock. The anti-stock-watering laws, so-called, under which a considerable amount of the company's outstanding stock has been issued, were evidently designed by the legislature to limit the number of shares to be issued not merely by the amount of money reasonably necessary to be raised, but by requiring the new stock to be offered at such premium as the shares might be expected to command in the market. It was clearly the legislative purpose that the corporation should gain rather than the stockholders by the issue of new stock. The change in this provision in 1909, allowing the directors to fix the price in the first instance, doubtless liberalized the law, but was not intended to change its original purpose nor to permit the fixing of the price of such new stock materially lower than would insure a ready market for the issue.

Under this law the company has realized on its outstanding capital stock of \$850,000, premiums ranging from \$20.00 to \$100 a share, and amounting in all to the sum of \$270,000. The contention of the company is, therefore, that with an outstanding capital of \$850,000 and upon an actual investment by the stockholders of \$1,120,000, it is entitled to a return upon \$1,700,000 because some of the stock has been issued at \$200 a share. It is obvious that the dividend burden would be the same whether reckoned at

10 per cent. of \$850,000 or at 5 per cent. of \$1,700,000. It may be conceded that, with respect to a company ably and conservatively managed, the Board is not required to consider seriously the propriety of a 10 per cent. dividend. But there is a wide difference between permitting the company to earn what is under all the circumstances a reasonable dividend on its authorized capital and acknowledging that, as a matter of right, it is entitled to earn from now on not less than some certain definite return on its full market value. The law intended impliedly, but plainly, to limit the dividend burden. The contention of the company, on the other hand, would make the law operate to capitalize against the public the earning power of the property under existing conditions and prices. It would convert the strength and security resulting from an amount of capital, low relative to the volume of business, into a menace to the future stability of the company and would tend seriously to impair, if not wholly to subvert, the manifest purpose of the public policy expressed in the law.

The city, however, did not urge that this company is not entitled to a fair return upon the property which it is actively and necessarily employing for the public convenience. The conditions which surround this case are such that no attempt need be made to reconcile the difference of opinion which may exist as to the exact basis and measure of such return. While a large share of the great prosperity which the company has enjoyed is plainly due to the skill and prudence with which its affairs have been managed yet its officers would no doubt concede that the growth of the city and the reductions in price heretofore voluntarily made have materially advanced its prosperity. Due to a combination of these factors the income from the entire business of the company is more than sufficient to provide for all reasonable operating expenses, with ample allowance for depreciation and for a liberal return, and this fact in itself is a forceful reason why a reduction in price may reasonably be made.

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In a recent decision with respect to street lighting prices the Board had occasion to say:

"The company's customers may be broadly divided into two groups, those who are dependent upon the company for their supply, and those who may readily supply themselves in other ways or by other forms of power. To the first the company may dictate the price, controlled only by motives of business expediency, its own sense of justice, and its duty as a public servant. To the second the company must so fix the price as to secure the customer's business or else go without it. The variety and wide range of the prices offered by the company are ample evidence of its recognition of these facts. The city with respect to its municipal are system plainly belongs to the first class." *

It must be equally obvious in this case that it is not those customers to whom prices are now offered at less than the maximum net price who should profit by a reduction. Such customers are already enjoying prices determined largely by the desire to secure their business, and the justification for these lower prices from that standpoint is found in the recent rapid development of the company's output and profits. The advantage of any reduction, which the Board may require, should rather accrue to the customers who must, in the nature of things, pay the maximum price and to the city for account of its street lighting.

Where the entire volume of the company's income is produced by such a variety of prices, the effect of any change in the maximum price to private customers upon such income can be determined only approximately, and on the assumption that other prevailing conditions remain constant. Almost inevitably, however, a reduction in prices creates an increase in demand, which is difficult to forecast accurately, although in this company's experience it has hitherto seemed to compensate fully for any prospective loss in revenue. This, however, may not be true of street lighting. A reduction in price for this service, while to some extent encouraging its extension,

* *Mayor of Worcester v. Worcester Electric Light Company*, July 10, 1912. Printed in Commission Leaflet No. 9, at page 100.—Ed.

may result in a corresponding decrease in revenue. No attempt was made in behalf of the city to demonstrate the fair price of street lights furnished by the company on the basis of the cost of this particular service. The division made by the company as between its so-called "fixed" and "operating" charges has already been described. The Board has frequently had occasion to point out that, while certain lines, lamps and fixtures are used and certain operating expenses are incurred exclusively for street lighting, and certain elements, both in investment and maintenance cost, are peculiar to this service as distinguished from the company's commercial business, the street lighting system has perhaps the best load factor of any customer. A study of the basis upon which the prices for street lights are made by the company makes evident its recognition of these characteristics of the service. But the Board believes that the company has given somewhat too great weight to the investment and maintenance costs, incident to this particular service, and too little to the favorable character of its load factor. Where differential prices to private customers are so freely made for different uses because apparently of corresponding differences in load factor, the city with respect to its street lighting seems to be entitled to like consideration. In any event it is difficult to see why the city should be charged more for the electricity required to operate the street lamps than the maximum net price charged private customers.

Since June 30, 1913, the city has required some changes in the type of lamps then installed, particularly in the substitution of magnetite for the so-called tungsten arcs. The magnetite lamps are more expensive to install and to maintain than their wattage equivalent in incandescent lamps and possibly in candle power. With the reductions in the maximum net price to private customers and in the street lighting prices hereinafter recommended, the Board is of the opinion that the company's earnings will be ample to cover all reasonable operating expenses, in-

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cluding a proper allowance for depreciation and a fair return upon the property which it is actively and necessarily employing for the public convenience.

The Board recommends, That, on and after July 1, 1914, the maximum net price for electricity supplied by the Cambridge Electric Light Company to commercial customers shall not exceed nine cents a kilowatt hour; that the price of the 6.6 ampere magnetite street lamps installed on ornamental posts, supplied by said company, shall be not more than ninety-eight dollars a year for those burning all night and every night, and seventy-two dollars and fifty cents a year for those burning every night until midnight, so long as not less than sixty of each class are so supplied; and that the yearly prices for incandescent street and bridge lamps burning all night and every night, except as otherwise indicated, so long as not less than seven hundred and forty of such lamps are so supplied shall be as follows:

50 watt tungsten lamps	\$17 00
75 watt tungsten lamps.....	20 00
100 watt tungsten lamps.....	25 00
125 watt tungsten lamps.....	29 00
250 watt tungsten lamps.....	50 00
3 light clusters of 100 watt tungsten lamps.....	60 00
2 lamps per post of 250 watt each, one burning till mid- night and one burning all night.....	73 00
60 watt lamps burning until 10 P. M.....	12 50

With the addition of one dollar a lamp a year for incandescent lamps installed in arc lamp hoods or outer globes, and of two dollars a lamp a year for incandescent lamps installed on ornamental posts and with the deductions for so-called "ornamental lighting" and for "out-ages" set forth in the company's street light schedule filed in the office of the Board on May 12, 1914.

NEW HAMPSHIRE.

Public Service Commission.

PETITION OF GRAFTON COUNTY ELECTRIC LIGHT AND POWER COMPANY FOR AUTHORITY TO ISSUE STOCK AND BONDS, FOR PERMISSION TO ENGAGE IN BUSINESS IN THE TOWNS OF LEBANON AND HANOVER AND TO TRANSMIT ELECTRICAL ENERGY OUTSIDE THE STATE.

File No. D—88.

PETITION OF LEBANON ELECTRIC LIGHT AND POWER COMPANY AND MASCOMA ELECTRIC LIGHT AND GAS COMPANY FOR AN ORDER AUTHORIZING A SALE AND TRANSFER BY THE LEBANON ELECTRIC LIGHT AND POWER COMPANY AND THE MASCOMA ELECTRIC LIGHT AND GAS COMPANY TO THE GRAFTON COUNTY ELECTRIC LIGHT AND POWER COMPANY OF THEIR PROPERTY AND FRANCHISES.

File No. D—89.

Rehearing Refused March 25, 1914.

(4 N. H. P. S. C. R. 192.)

Petitioners' Claim — Cost of Reproduction.

The petitioners throughout this case rested upon the engineers' testimony as to the cost of reproduction, and claimed that they were entitled as a matter of strict legal right to the replacement value as an irreducible minimum to be increased by an allowance for the alleged exceptional earning power of the properties without inquiry into any other factor as a basis of valuation, such as the amount of the investment, the financial history of the companies generally, and the price paid for them.

Commission's Attitude toward Testimony.

On motion for rehearing,

Held: That by employing an engineer to examine and report upon property, the Commission does not become legally bound to accept the valuation placed upon it by him; nor does the Commission feel bound to surrender its judgment to that of any witness, irrespective of whether

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he may be paid or employed by the parties or by the Commission; nor is it incumbent upon the Commission to state in detail its reasons for not adopting the opinion of any witness.

Sufficiency of Testimony — Assumptions not Supported by Record — Evidence of Contents of Books.

Held: That the meagerness of the testimony upon points which the Commission clearly indicated to be material and important, does not justify supplying deficiencies in the proof by assumptions not supported by the record, and that statements of counsel in briefs and motions for rehearing, cannot be accepted as evidence of the contents of books not produced.

Effect on Value of Legislation Creating Public Service Commission.

Held: That the legislation subjecting public utilities to the jurisdiction of the Commission, was not intended to impose upon properties additional obligations such as would affect in any degree the fair value of such properties for purposes of transfer, capitalization or rate making, the Commission being merely a legislative agency, created to exercise certain powers of regulation already existing in the legislature which it could not itself conveniently exercise.

Present Fair Value — Distinction between Value of Private Property and Utility Property.

Held: That whatever be the true basis of valuation of public utility property, it differs widely, in the relation which the value of the plant as a unit bears to the sum of the values of its component elements, from a like aggregation of equivalent elements held in strictly private ownership, in that it is held subject to certain restrictions and duties. The value of purely private property is its exchange value, determined largely by its earning capacity under unregulated charges and by the cost of producing like property, whereas what a utility will sell for in the market, or what it can be made to earn a return upon under unregulated rates, or what it can be reproduced for, cannot be taken as the absolute measure of the value of the utility's property, although these matters "are to be given such weight as may be just and right in each case."

Cost of Reproduction Merely Relevant Fact — Other Relevant Facts.

Held: That the cost of reproducing the component elements of a public utility property may vary widely from the amount which should be fixed as the fair value for capitalization and rate purposes; cost of reproduction is not a fixed, absolute part of the present fair value to which other items must be added for other elements of value, but merely a fact to be considered in connection with all other relevant facts, such as the entire financial history of the plant, the way in which the properties were built up and the money which actually went into them.

Value at Date of Inquiry.

Held: That in a capitalization, rate or transfer case, the value of a public utility property is to be fixed as of the date of inquiry, the amount originally invested, the selling price at any time, or the cost of reproduction, being merely factors entitled to weight in determining the present fair value.

Selling Price as Evidence of Present Fair Value.

Held: That in this case, owing to the peculiar knowledge which the parties selling the properties to the present owner had of the original cost, the cost of operation, the earning capacity and the rate of depreciation, the price accepted by them was entitled to more weight as fixing the upper limit of value than any other single fact, but it must not be understood that whatever price a purchaser may see fit to pay for public utility property, will be accepted as fixing its value for rate or capitalization purposes.

Relation of Securities to Present Fair Value.

Held: That the amount of securities issued against property by promoters or incorporators usually has little tendency to show its value, and the amount issued when the Mascoma company was organized is entitled to little weight since it is not shown to have had any relation to the actual amount theretofore invested in the properties conveyed to it or to the actual value of those properties at that time.

Value of Property as an Entity — Water Power — Going Value — Overhead Charges.

Held: That it is best to fix a value upon the entire property as an entity without assigning specific values for water power, going value and overhead charges.

Value of Water Power — Saving over Coal.

Held: That water power has value "if it produces energy at a sufficient saving over coal to *offset the disadvantages attendant upon its variable production,*" and a fair allowance for such value should be included in the basis upon which a return is allowed and may be capitalized.

Going Value — Dividends Foregone as Related to Present Fair Value.

Held: That dividends shown to have been foregone, are in fact investments as much as the funds originally advanced by stockholders, and are entitled to consideration as part of the original cost in arriving at the present fair value, since the dividends foregone must be considered to have been invested either in constructing physical properties or in building up the business to a paying basis.

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Going Value — Attached Business — Excessive Earning Power under Existing Rates.

Held: That although the Commission considered the properties as going concerns having attached to them sufficient customers to give them the earning power at existing rates which they were shown to have, in view of the fact that rates should yield only a fair return on present fair value, it appears that the rates charged are higher than they lawfully ought to be, so that instead of increasing capitalization to absorb the excess earnings, rates should be reduced to a considerable extent.

Finding as to Value.

Held: That it is not incumbent upon the Commission to make any specific finding as to value for the reason that its finding that the value of the properties did not exceed the price paid for them by their present owner, i. e., \$152,015.54, made it clear that the proposed transfer for \$300,000 of securities would be prejudicial to the public interest;

That the petitioners are not precluded from applying for authority to transfer the properties for any amount less than \$300,000 which they may believe can be shown to be their present fair value.

Insufficient Grounds for Rehearing.

Held: That a rehearing should not be granted to permit the offering of additional evidence merely because a party is dissatisfied with the findings made.

Motion dismissed.*

REPORT ON MOTION FOR REHEARING.†

NILES, Commissioner:

In the above entitled cases orders were made on February 3, 1914,‡ dismissing the petitions. On February 21, a motion for a rehearing was filed, in which it was alleged that the orders were unreasonable and unlawful by reason of various errors of law and of fact set forth in thirty-seven separate specifications. The petition also contains twenty-six requests for findings of fact and rulings of law, which are preceded by a statement that said orders are further unreasonable and unlawful in so far as they involve “any other findings of fact or rulings of law inconsistent

* Editor's headnote.

† 4 N. H. P. S. C. R. 192.— Ed.

Printed in Commission Leaflet No. 28, at page 533.— Ed.

with the requests for findings and rulings hereinafter set forth."

It is unnecessary for us to discuss all of the specifications of alleged error. So far as they attack the findings of the Commission merely upon the ground that those findings could not be made upon the evidence by reasonable men, there is obviously no occasion for comment by us unless upon review we find occasion to change those findings. We do not find such occasion, and we shall accordingly do little more here than to point out some of the particulars in which it is evident that the petitioners have wholly misapprehended what the Commission said in its report in these cases.

In their third specification the petitioners allege as error that the Commission did not attach to the properties the reproduction value testified to by a witness "employed and paid by the Commission," but "disregarded this evidence without giving reasons, except a suggestion as to the rule of law applicable to the valuation of copper wire and pole rights." The Commission does not, in any case, feel bound to surrender its judgment to that of any witness, irrespective of whether he may be paid or employed by parties or by the Commission. The witness in question is not a member of the regular staff of the Commission, but has been employed in this case only. It is clear from our report that we believed his unit prices excessive. It may be frankly so stated now without any intention to reflect upon him. The question then is whether by employing an engineer to examine and report upon a property the Commission becomes legally bound to accept any valuation he may see fit to place upon it. We shall not act upon that theory until we are compelled to do so.

The remarks with regard to the valuation of copper wire and pole rights were not intended as rulings of law. Reference was made to those two matters merely as indicative of the liberality of the witness in making up his valuation. In physical valuations, engineers follow various rules as to the cost of materials to apply in fixing unit prices. It is, of course, evident, and it is clearly recognized

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by us, that the present price of any material must be the price to consider in determining simply the present cost of reproduction, but it is our belief that to adopt such price to the exclusion of original cost and other factors will, in some cases, result in valuations clearly too high, and in others, too low. The present price of reproduction is an element to be considered, and ought to be given due weight, but it is not controlling. What the Commission had in mind as to copper wire can be fully understood only in connection with that part of the report in the *Berlin* case* to which we referred. In discussing the same matter there we said:

“Sloan, Huddle and Company figured the value of copper wire at the average price for the last five years, making a price per pound of 15.5 cents, while Sanderson and Porter figured upon the basis of the present price per pound, which is 19 cents. This makes a substantial difference in the item allowed for copper wire. It should be remembered, however, that present prices were not paid in the construction of these properties. The original cost of construction and the present cost of reproduction are both elements to be considered in determining fair value. The average price for five years is more likely to indicate the original cost than the present price.

We believe that stability of investment is quite as essential to investors in public utilities as fair value is to the public at large, and that in transfer cases and rate cases it is in the interest of both the investors and the public not to attach such weight to the single element of cost of reproduction as to allow the temporary fluctuations in prices of material unduly to affect the value of permanent plants. It would seem to be fair, and consistent with a sound policy, to attach more weight to average prices of materials over a considerable term than to prices upon any single particular date. Five years would seem to be a reasonable term. We shall, accordingly, not change this item in the tabulation of Sloan, Huddle and Company, but we shall consider and give due weight to the evidence as to the present cost of copper wire in making our final conclusion as to fair value.”

In this case we followed the same course, and in coming to our final conclusion, as we clearly stated, gave “careful consideration to all the evidence before us tending to show * * * the present cost to reproduce (the properties proposed to be transferred).”

* Printed in Commission Leaflet No. 21, at page 781.—Ed.

With regard to pole rights, we did not rule that the same must be taken at their actual cost when the lines were built. It is clear that in reproducing the properties today present prices would have to be paid. So far as there is evidence before us having any tendency to show what would have to be paid for pole rights today, the same has been considered. There is, however, nothing in the evidence which satisfies us that the present cost would be anything approaching the amount allowed by the witness. We referred to these matters, as stated, merely to illustrate the way his valuations were made. Other illustrations might have been given, but we do not understand it to be incumbent upon us to state in detail the reasons for not adopting the opinion of any witness who may testify.

The fourth specification alleges that the Commission either failed to make allowance for (1) overhead charges, (2) water power, and (3) "going concern value," or "allowed the grossly inadequate sum of \$22,000, viz., the difference between * * * \$130,000 and \$152,000." The trouble with this specification is that it assumes the cost of reproduction to be a fixed absolute part of the present fair value to which other items must be added for other elements of value, whereas cost of reproduction is merely a fact to be considered in connection with all other relevant facts. In this case, as stated, we considered all evidence tending to show the cost to reproduce the properties. This included all evidence as to what it would cost to reproduce the properties today, including the poles and such charges for "overhead" as would have to be paid. In coming to our final conclusion, however, we considered this evidence in connection with such facts as were before us tending to show the way in which the properties were built up, and the money which actually went into them. We understand this to be the rule laid down in *Smyth v. Ames*.

It is alleged as error in the fifth specification that we failed to state by what principles we were governed in attaching values to the water powers, and that we did not include a separate item assigned to "going concern value."

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"We feel that any attempt to establish a formula for determining the value of water power would prove as difficult as the establishment of a formula for fixing by mathematical process the exact value of an entire public utility plant.

"The original cost of the water power, the cost of developing the same, and cost of similar powers in substantially similar locations, the amount of actual earnings in the past, and estimated earnings in the future, are undoubtedly all proper matters for consideration. But when a water power is an integral part of a utility property it is unnecessary and not ordinarily desirable to endeavor to fix an exact value for the same considered apart from the other portions of the property to be valued. Evidence of the character indicated should be considered, but in the end it will ordinarily be best to fix a value upon the entire property to be appraised rather than to attempt to dissect it, and fix an exact value on all its several parts." In re *Berlin Electric Light Company* (decided August 30, 1913).*

In determining this case we considered these properties as going concerns, having attached to their lines sufficient customers to give them the earning power at present rates which they were shown to have. We considered this earning power, but we considered also the fact that by law the rates were limited to an amount sufficient only to yield a fair return upon the present fair value of the properties in use. It is evident that the rates are now higher than they lawfully ought to be. Instead of increasing capitalization to absorb the excess earnings, rates should apparently be reduced to a considerable extent. After the decision in these cases the Mascoma and Lebanon companies were both asked to make a voluntary reduction in rates. That suggestion is still pending. If it shall not be complied with, it will be the clear duty of this Commission, by proper proceedings, to determine and fix reasonable rates.

This method of treating the element termed by the petitioners "going concern value" appears to have been approved by the United States Supreme Court in the *Cedar Rapids Gas* case. In that case a "going concern value" of \$100,000 was claimed, but the State court said:

* Printed in Commission Leaflet No. 21, at page 781.—Ed.

"The value of the plant is to be estimated in its entirety, rather than by the addition of estimates on its component parts, though the latter course will materially aid in determining the value. Advantages have accrued through the sagacity of its management as contended by appellant. So, too, there are the inevitable mistakes which would not be likely in the construction of a new plant; but to put a new plant in profitable operation time would be required, and, aside from the intangible element of good will, the fact that the plant is in successful operation constitutes an element of value. * * * The value of the system as completed, earning a present income, is the criterion. In so far as influenced by income, however, the computation necessarily must be made on the basis of reasonable charges, for whatever is exacted for a public service in excess of this is to be regarded as unlawful. Save as above indicated, the element of value designated as 'going concern' is but another name for 'good will,' which is not to be taken into account in a case like this, where the company is granted a monopoly."

The case was brought before the United States Supreme Court upon a writ of error, and upon this point, in an opinion by HOLMES, J., it was said:

"Although it is argued that the court excluded going value, the court expressly took into account the fact that the plant was in successful operation. What it excluded was the good will or advantage incident to the possession of a monopoly, so far as that might be supposed to give the plaintiff the power to charge more than a reasonable price. * * * The court fixed a value on the plant that considerably exceeded its cost and estimated that under the ordinance the return would be over 6 per cent. Its attitude was fair and we do not feel called upon to follow the plaintiff into a nice discussion of details. *Cedar Rapids Gas Light Co. v. City of Cedar Rapids*, 223 U. S. 669."

The sixth and seventh specifications allege as error the findings of the Commission as to the cash investment in the physical properties in question. These findings were made after a careful study of such books of account of the two companies as were submitted to the Commission and all other evidence before us. The bonds and stocks issued when the Mascoma company was organized are not shown to have had any relation to the actual amount theretofore invested in the properties conveyed to it, or to the actual value of those properties at that time. The amount of capital issued against property by promoters or incorpo-

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rators usually has little tendency to show its value. Certainly it cannot be treated as controlling in a case such as this. We have considered all of the facts connected with the history of these properties so far as the same seem to have any tendency to show either original cost or present value, but upon all the evidence we are constrained to find, as above stated, that the amount of stock and bonds issued against the Mascoma properties in 1893 is entitled to little weight as indicating either the cost or value of the Mascoma properties at that time.

It is alleged in the eighth specification that the Commission ignored the fact that the Mascoma company paid no dividends in early years. This supposition is entirely unfounded either in fact or in anything which is said in our report. The evidence as to non-payment of dividends was given due weight. We considered that in this case dividends shown to have been foregone were in fact investments by the stockholders in the properties in question, and were entitled to be considered as a part of original cost in arriving at the fair present value, in the same way as if originally paid in for additional capital stock issued. Unless the stockholders of the Mascoma company had foregone dividends in early years, either its plant would not have been built up to its present value, or the company would have had a much larger debt.

In any case where the present fair value of a public utility plant is to be determined we hold that the entire financial history of the plant is relevant matter for consideration.

"Justice requires that one devoting his money to an investment in a public service property (assuming the enterprise to be well conceived and well managed) shall receive a fair return upon that property during all the time that it is devoted to public use—, during the first year as well as succeeding years,—and that he shall receive as well a return upon the amounts necessarily spent in getting the business upon a paying basis." *In re Berlin Electric Light Co.**

Whatever the owners of the property have spent in the public interest in the construction and development of the

* Printed in Commission Leaflet No. 21, at page 781.—Ed.

properties to be valued is, under *Smyth v. Ames*, entitled to consideration, and, we believe, to very much weight. We understand this to apply to dividends foregone and reinvested in plant as well as to investment made from funds originally advanced by stockholders. In this case we have considered that the dividends foregone were invested either in constructing physical properties or in building up the business to a paying basis. We may say, however, that the amounts so invested are apparently much less than are claimed by the petitioners in this specification.

It should also be noted, with reference to this and other specifications, that the evidence as to the financial history of these companies is very meager. Repeated and persistent efforts to obtain access to their books of account resulted in securing, after long delay, only certain books of the Mascoma company, the results of an examination of which are summed up in a report made to us by Frederick E. Webster, then assistant clerk of this Commission, a skilled accountant, upon which report our conclusions as to the financial history of this company are largely based, and a single recent ledger and so-called journal of the Lebanon company, practically useless without the ordinary accompanying and explanatory books. It appeared that the earlier books of the Lebanon company had, within a short time, been examined by an expert accountant in behalf of the petitioners. They informed us that he reported that very little information of value could be obtained from them. Counsel for the petitioners also stated during the hearings that he had learned that the books were at the company's office in Lebanon. When we attempted to get them, however, they could not be found. None of the books were put in evidence, and they appeared in the case only so far as our accountant reported to us the results of his examination of them. Statements of counsel in briefs and motions for rehearing cannot be accepted as evidence of the contents of books not furnished to the Commission for examination or not offered as evidence. The earlier books of the Mascoma company are

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very vague and unsatisfactory, and in our opinion do not support many of the inferences which counsel draw from them. In particular, it should be noted that we find that the dividend account of the Mascoma company represents, at least in the main, sums actually paid to stockholders as dividends. The irregularity of the amounts paid, in view of the dominant ownership and control of the company by the individuals to whom payment was made, the only other stockholders being the salaried manager of the company and its counsel, does not nullify the inference to be drawn from the setting up and maintaining for a long series of years of an account specifically entitled a dividend account. It is probable, in view of the general looseness of the book-keeping, that some items appear in this account which do not properly belong there. But the amount which should be deducted is not large enough to change our conclusion as to the true nature of the substance of the account. And a complete reversal of the finding upon this point would not at all affect the decision upon these petitions.

The books, moreover, were not the only accessible source of evidence as to the financial history of these companies. Mr. Rogers, the president, general manager and majority owner of the Lebanon company, presumably knows all that there is to know about the history of that company, except for details of figures which would have to be obtained from the books. The petitioners' counsel at the opening hearing, held in October, 1912, a year before the final submission of the case, regretted that it was inconvenient for Mr. Rogers to be present on that particular day. He was never produced at any subsequent hearing.

Mr. Collins, the manager, and, outside of the Barnes family, the only considerable stockholder of the Mascoma company, could certainly have cleared up many important and material points upon which the books were deficient or obscure. At a hearing in January, 1913, the Commission suggested the importance of calling Mr. Collins to explain these matters. But he was never called.

The explanation of the unsatisfactory state of the evidence in these particulars rests in the fact that the peti-

tioners at all stages of the case most strenuously contended that the amount of the investment, the financial history of the companies generally, and the price paid for them, were absolutely immaterial, and that they were entitled, as a matter of strict legal right, to the reproduction cost of the properties. They planted themselves squarely and without reservation upon the engineers' testimony as to that cost, and protested vigorously and persistently against any inquiry into any other factor as a basis of valuation. And in his final argument the petitioners' counsel claimed that they were entitled to the replacement value as an irreducible minimum, to be increased by an allowance for the alleged exceptional earning power of the properties.

The meagerness of the testimony upon points which the Commission clearly indicated to be in their judgment both material and important does not justify supplying deficiencies in the proof by assumptions not supported by the record.

The twelfth specification alleges that the Commission "apparently holds that the plant and construction accounts of the Mascoma and Lebanon companies state the total amount of the investment in those properties." Nothing in our report is intended to indicate any such finding—in fact the contrary clearly appears. We considered all of the evidence before us having any tendency to show that the accounts in question understated the actual costs which they purported to state, and we accepted them, not as an exact statement of such costs, but as statements made "with approximate correctness." In the case of the Lebanon company it was recognized that the investment in plant and equipment might run several thousand dollars above the total stated.

And the detailed examination made by Mr. Webster showed that the construction account of the Mascoma company contained items which did not properly belong there. His examination involved a consideration of each separate item charged to that account, and showed that the accounts kept by the company included substantially everything

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that should have been charged to that account, together with some considerable items not so chargeable.

So far as any allegations of fact contained in the various specifications of error are not here discussed, they are considered as either immaterial or as not supported by evidence which satisfies us that they could justly be found to have been proved.

The sixteenth, seventeenth and eighteenth specifications are founded upon an evident misapprehension of certain discussion in our report. It was there suggested that "whatever the true basis of valuation of the property of a public utility * * it differs widely from a like aggregation of equivalent elements held in strictly private ownership." That paragraph and the five following paragraphs of the report were intended merely as a statement of the very evident fact that a public utility property is held subject to certain important restrictions and duties. The owners of such property may not transfer it to whom they will, and upon what terms they will, but may make such transfer only when approved by the Commission as provided by the statute; they may not capitalize the property according to their own judgment for whatever sum they please, but stock and bonds may be issued only when approved by the Commission; they may not charge whatever price they can secure for service which they render, but are limited to a reasonable return upon the fair value of their property; they are not at liberty to determine for themselves what character of service they will give or what equipment they will provide, but are subject to supervision and regulation with reference thereto; and they are required likewise to keep accounts in the form prescribed by the Commission, at all times open to inspection, and to make returns showing the precise state of their affairs so that the amount of their earnings may be at all times known and kept within the limit of a fair return allowed by law.

It is evident that in fixing the value of a public utility property, either for rate making or for capitalization purposes, it cannot be considered as if its owners were wholly

free from all public duties and from all public control and regulation. The value of purely private property of any kind is its exchange value—what it will sell for in the market. And what it will sell for in the market is determined largely by the amount of earning capacity which it has under such charges for its use as its owners may see fit to make. What it will sell for in the market is also ordinarily determined very closely by what another like piece of property can be produced for. But neither what it will sell for in the market, nor what it can be made to earn a return upon under unregulated rates, nor what it can be reproduced for, can be taken as the absolute measure of the value of a public utility property. All of these matters are to be taken into consideration with other facts and “are to be given such weight as may be just and right in each case.” In one case the present fair value, upon which a fair return should be permitted, may be less than what it would cost to reproduce the physical property; in another case the owners may have wisely and prudently invested sufficient sums in carrying the business through a development period, either in money originally advanced or in dividends foregone, so that the “present fair value” ought not to be limited to the reproduction cost. It was in this sense that the statement was made that a public utility “in the relation which the value of the plant as a unit bears to the sum of the value of its component elements differs widely from a like aggregation of equivalent elements held in strictly private ownership.”

It would be a manifest absurdity to state that the whole is less than the sum of the parts. We did, however, mean to hold that the cost of reproducing the component elements of a public utility property may vary widely from the amount which should be fixed as the fair value for capitalization or rate purposes.

It is not our understanding that the legislation creating this Commission and subjecting public utilities to its jurisdiction had the effect, or was intended to have the effect, of subjecting public utility properties to disabilities or of

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imposing incumbrances upon such properties, so as to affect in any degree whatever the fair value of such properties for purposes of transfer, capitalization or rate making. The restrictions and duties which in our report were referred to as "disabilities" or "incumbrances" were in no sense created by the Public Service Commission Act. Public utilities were just as much subject to governmental regulation before the passage of the act in question as afterwards, the Commission being merely a legislative agency created to exercise certain powers of regulation which the legislature could not itself conveniently exercise. The regulatory machinery was new, but the obligation to submit to regulation and the duty to provide reasonable service at just and reasonable rates existed anterior to the passage of the act, and sprang from the public use to which the owners of those properties originally devoted the same, and from the rights and franchises received by them from the public. The view taken by the Commission of the effect of the legislation in question was indicated in *Remick et al. v. Boston and Maine Railroad** (decided February 7, 1914), where it is said:

"The common law duty * * is probably not increased with respect to facilities by the Public Service Commission Act, but merely a means of enforcing the performance of that duty supplied."

The twentieth specification is based upon an assumption which is contrary to the clear statement of the report. The discussion to which it has reference was not intended to indicate the basis upon which the Commission proceeded in determining the value of the properties in this case. Recognizing some present uncertainty in the law, we considered it our duty to follow the rule as laid down in *Smyth v. Ames*, and clearly so stated.

We also recognize that in a capitalization, rate or transfer case, the value of a public utility property is to be fixed as of the date of the inquiry, and not as of any other date. As we have before said, what amounts were origi-

* 4 N. H. P. S. C. R. 209, 212.— Ed.

nally invested in the property, or the amount it sold for at a given date, or what amount it would cost to reproduce the same, does not control and fix the fair present value. As a matter of law, no single fact is controlling. The weight to be given any fact is to be determined by the Commission. In this particular case we felt that the amount paid for the properties by Mr. Streeter was entitled to more weight as fixing the limit of value than any other single fact, and we still feel so. We did not, however, disregard all other evidence, nor did we give to the fact mentioned more weight than to all other evidence. We carefully considered the other evidence, and we were convinced by it that the value of the properties was substantially above the amount of their present capitalization, but was not more than the amount paid for them by Mr. Streeter. We certainly do not intend to have it understood that whatever price a purchaser may see fit to pay for utility properties will be accepted as fixing the value for rate or capitalization purposes. Owing to the peculiar knowledge which those making sales to Mr. Streeter had of the original cost of these properties, the cost of their operation, their earning capacity and their rate of depreciation, we felt that the price accepted by them was entitled to special weight. We should, however, probably have reached the same conclusion which we did reach upon the other evidence in the case had this fact been wholly excluded from consideration.

Specifications thirty-two to thirty-seven, inclusive, apply to supposed rulings of the Commission with reference to the petitioners' water powers, which supposed rulings, it was alleged, are erroneous as a matter of law. We have examined that portion of our report in which the water powers and claims of value therefor were discussed, and we find nothing which could be considered as a ruling of law unless the following statement might be so considered:

"We cannot admit that there is any compulsory method of determining the value of a water power, or of any other part of the plant of a public utility, except the method of considering all the available evidence, and,

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exercising the best possible judgment in giving to each fact its due weight, determining, upon all the evidence, what that power is worth in the market. Its saving to the owner over some more expensive method of power production does not measure its selling price, or value, any more than the cost of reproduction method determines the value of physical structures, simply because, as a matter of fact, water powers are not valued and do not sell upon that basis."

The "saving over coal" method would be a very easy and convenient method of valuing water powers. It would lead to absurd results in most cases, and would erect a constitutional barrier against rate regulation in the case of most hydro-electric utilities. But if it is a rule which we are legally bound to adopt and follow, it will be well to have that point authoritatively determined as early as may be, as we do not now so hold.

In this case we did consider all of the evidence which was before us having any tendency to indicate what the water powers were worth in the market, and in placing a value upon the properties as a whole we made full and fair allowance for the water powers. This was not done on the "saving over coal" basis, which would, in our opinion, have resulted in an allowance grossly out of proportion to the real value of the powers for sale in the market, for use in the operation of these plants, or for any other purpose. We did hold that water power has value "if it produces energy at a sufficient saving over coal to offset the disadvantages attendant upon its variable production." Such value the owners of the power are entitled to capitalize and to earn a return upon. Nothing in our report was intended, nor do we think can be fairly interpreted, as indicating any different view.

With reference to other alleged errors of law, it is sufficient to state that an examination of our report will, in most instances, show that the specifications are based upon a misapprehension of the report so clear as not to require to be here pointed out, and that in other cases the action of the Commission complained of as error of law was in fact in accordance with the law, as we understand it.

Numerous requests are made for findings of fact and rulings of law in case a rehearing should be granted. We find no occasion to grant a rehearing, but in no event should we deem it consistent with a proper practice before this Commission to recognize a right by parties in any case to require the Commission to make a multitude of rulings and findings unnecessary to a proper disposition of matters involved. If our action is deemed not to be supported here by evidence, the right of parties to an appeal, and the method of taking such appeal, are clearly defined in the statute. The statute does not contemplate any such proceeding as is here proposed.

As to the general allegations that the orders are unreasonable and unlawful in so far as they involve "any findings of fact or rulings of law inconsistent" with these requests, we will only say that we do not know what is meant by the allegations, and that it does not give us that opportunity to re-examine the action complained of which was evidently designed by the legislature when it provided that the motion "shall set forth fully" every ground relied on.

One point upon which the report appears to have been misapprehended may perhaps well be pointed out. It is assumed that the Commission has made a finding that the properties are of the value of \$152,000. We did not so find, nor did we fix any specific value thereon. We did find that the value did not exceed the price paid by Mr. Streeter, meaning the net cost to him of \$152,015.54. Having found that fact, it was unnecessary for us to consider the case further, since the proposed transfer for \$300,000 of securities was, in our opinion, clearly prejudicial to the public interest.

The only question before the Commission upon the petition was whether the transfer should be authorized upon the terms proposed, which terms were found in certain propositions made by the Lebanon and Mascoma companies, accepted by the Grafton company, and set forth in the petition. We found in each case that the amount proposed to be paid in securities issued against the properties

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exceeded the present fair value of the same. In each case we found, not only that the petitioners had failed to show that the transfer proposed would be for the public good, but that such transfer, by reason of the excessive price proposed, would be inimical to the public welfare, and against the public good. Having found that fact, it was not incumbent upon us to make any finding as to the exact value of the properties, nor to consider other questions which might otherwise have arisen.

The petitions were dismissed "without prejudice to the right of the petitioners to make application for authority to transfer for a less purchase price than is now proposed." It was the intent of the orders to go no further than to deny the pending petitions. The opinion of the Commission that the properties did not exceed in value the price paid for them by Mr. Streeter was not intended to preclude the petitioners from applying for authority to transfer them for any amount less than \$300,000 which the petitioners may believe can be shown to be their present fair value. Upon such new application all relevant evidence will be considered, and such action will be taken as the facts justify.

There is no occasion for the introduction of further evidence upon the pending petitions. We are clearly satisfied, from the evidence produced by the petitioners themselves, that an excessive price, is proposed to be paid for each of these properties. The petitions have been pending for many months, and all evidence which the petitioners desired to offer was received. As we have before stated:

"A rehearing should not be granted to permit the offering of additional evidence merely because a party is dissatisfied with the findings made." Report on motion for rehearing, *Sanborn v. Railroad* (decided November 11, 1913)." *

The motion for a rehearing is denied. Filed March 25, 1914.

BENTON and WORTHEN, *Commissioners*, concurred.

* 4 N. H. P. S. C. R. 27, 33.—ED.

STANDARDS OF SERVICE OF ELECTRIC UTILITIES.

Order No. 314.

Dated May 27, 1914.

(4 N. H. P. S. C. R. 328.)

ORDER.

Under the provisions of Chapter 124 of the Laws of 1913, and in the exercise of the general powers of the Commission, after due notice to all public utilities affected, and after a public hearing held in pursuance of said notice at the office of the Commission on the twenty-eighth day of January, 1914,

It is ordered, That the rules annexed to this order, entitled, "*Rules Prescribing Standards for Electric Service, and Providing for the Testing of Meters, and Otherwise Regulating the Service of Electric Utilities*," be, and hereby are, adopted and put in force,

And it is further ordered, That said rules, and the regulations, standards and requirements, thereby fixed and prescribed shall apply to each public utility engaged in the generation, transmission, or sale of electricity ultimately sold to the public which in any one year shall have generated transmitted or sold more than 25,000 kilowatt hours, or shall have had more than twenty-five consumers, and that each such utility shall in all respects conform to such rules, regulations, standards and requirements, and shall comply therewith and carry the same into effect,

And it is further ordered, That this order shall take effect on July 1, 1914. Ninety days is fixed as a reasonable time within which Rules 9 and 15 shall be complied with.

By order of the Public Service Commission, this twenty-seventh day of May, 1914.

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RULES PRESCRIBING STANDARDS FOR ELECTRIC SERVICE, AND PROVIDING FOR THE TESTING OF METERS, AND OTHERWISE REGULATING THE SERVICE OF ELECTRIC UTILITIES.

DEFINITIONS.

RULE 1. In the interpretation of these rules "Commission" shall be taken to mean the Public Service Commission; "utility" shall be taken to mean any public utility engaged in supplying electric energy to the public, or supplying current to such utility; "lighting hours" shall be taken to mean the hours between sunset and 10:30 P. M.; "light load" shall be taken to mean any load not less than four nor more than 10 per cent. of the rated capacity of the meter; "normal load" shall be taken to mean the percentage of the connected load according to the following classification:

	<i>Per cent.</i>
Residence and apartment lighting.....	25
Elevator service	40
Factories (individual drive), churches and offices.....	45
Factories (shaft drive), theatres, clubs, entrances, hallways, and general store lighting.....	60
Saloons, restaurants, pumps, air compressors, ice machines, and moving picture theatres.....	70
Sign and window lighting and blowers.....	100

and "heavy load" any load not less than 60 per cent. of the rated capacity of the meter.

In determining the percentage error of a meter under Rules 5, 6, and 7, the meter shall be tested at light load, normal load, and heavy load. The average of these tests, obtained by multiplying the error at normal load by three, adding (algebraically) the error at light load and heavy load and dividing the total by five, shall be deemed as the average error of the meter, and such final average shall be used in calculating the amount of the refund should it exceed 4 per cent.

ALLOWABLE METER ERROR.

RULE 2. No electric service meter shall be allowed to remain in service which registers upon no load, has an incorrect gear ratio, register constant, test constant, or dial

train, or which has an error in measurement in excess of 4 per cent. at either light load, normal load, or heavy load.

INSTALLATION TESTS.

RULE 3. Each electric meter shall be checked for correct connection, mechanical conditions, suitable location, and accuracy of measurement, and shall be adjusted to within 1 per cent. at light load and at heavy load within sixty days after installation. Meters shall be tested under conditions similar to those at which they will be required to operate. Meters installed with instrument transformers or shunts must be tested jointly with the transformers or shunts, otherwise the ratio of transformation of transformers, or calibration of the shunts must be determined at least once every five years, and records kept of such tests.

PERIODIC TESTS.

RULE 4. Each electric service meter shall be tested according to the following schedule, and adjusted to within 1 per cent. at light load and heavy load. The tests shall be made by comparing the meter while connected in its permanent position on the consumer's premises, when practicable, with suitable standards, making at least two test runs at each load, of at least thirty seconds each, which agree within 1 per cent.

Single phase, induction type meters, having current capacities not exceeding 50 amperes, and polyphase induction type meters having current capacities not exceeding 25 amperes, shall be tested at least once every twenty-four months, and as much oftener as the results shall warrant. During each period of twelve months, until all such meters have been tested, each utility shall test not less than 50 per cent. of the meters now in service, those longest in service being tested first; *provided, however*, that this rule shall not require the testing of any meter within the period fixed by the above schedule after any prior test, if the utility shall have preserved a record of such prior test, and shall prior to September 1, 1914, file with the Commis-

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sion a statement giving the make, type, number, and size of the meter with the date and results of such prior test.

All single phase, induction type meters, having current capacities exceeding 50 amperes, all polyphase induction type meters having current capacities exceeding 25 amperes, and all commutator type meters, shall be tested at least once every twelve months, and as much oftener as results obtained shall warrant.

REQUEST TESTS.

RULE 5. Each utility furnishing metered electric service shall make a test of the accuracy of any electric service meter upon request of the consumer, made at the office of the utility, provided the consumer does not request such test more frequently than once in six months. A report giving the results of each request test shall be made to the consumer.

COMMISSION TESTS.

RULE 6. Any electric service meter may be tested by an inspector employed by the Commission, upon written application of the consumer, and payment of the cost of inspection to the Commission. If the meter is found to be more than 4 per cent. fast, the amount paid by the consumer will be returned to him, and shall then be paid by the utility. Each such application shall be accompanied by a fee of \$1.00, which is fixed as the fee for testing upon complaint any meter with a voltage rating not exceeding 250 volts and a current capacity not exceeding 25 amperes within village or city limits upon any railroad. For testing other meters a fee equal to the estimated cost to the Commission will be required.

RULE 7. The Commission will, from time to time, test such meters of each utility as it shall judge expedient. Under the provisions of Section 2 of Chapter 124 of the Laws of 1913, a fee of 50 cents will be collected from the utility for each meter so tested with a voltage rating not exceeding 250 volts and a current capacity not exceeding

25 amperes, and for each meter of greater capacity a fee equal to the cost to the Commission of testing the same.

REFUNDS.*

RULE 8. Whenever a meter is tested under Rules 5, 6 or 7, and is found to be more than 4 per cent. fast, the utility shall refund to the consumer such percentage of the amount of the bills for the previous six months, or for the time the meter was in service, or since the last preceding test, not exceeding six months, as the meter was found to be in error at the time of test; *provided, however*, that the Commission in any case may relieve the utility from this requirement to such extent as the facts may appear justly to require. Whenever a meter so tested is found to be more than 4 per cent. slow, the utility may make application to the Commission for authority to render a bill to the consumer for electricity supplied during the preceding six months, not covered by bills previously rendered; but such application should be made only in cases of substantial importance, and should be accompanied by a statement showing the utility not to be in fault for allowing the incorrect meter to be in service.

METER TESTING EQUIPMENT.

RULE 9. Each utility furnishing metered electric service shall have available, in proper working condition, suitable standards for testing its meters, and shall either maintain these standards correct within $1\frac{1}{2}$ of 1 per cent. or apply the proper correction to all tests.

METER RECORDS.

RULE 10. Whenever an electric service meter is tested, the original test record shall be kept indicating the information necessary for identifying the meter, the reasons for making the test, the reading of the meter before being dis-

* This rule shall not be taken to require the refund of any part of a minimum service, or demand charge.

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turbed, a statement regarding creepage and the results of the test, together with all data taken. This record must be sufficiently complete to permit the convenient checking of the methods and the calculations. Each utility shall maintain a meter record, numerically arranged, indicating approximately when the meter was purchased, its identification, its various places of installation with dates of installation and removal, and the dates and general results of all tests.

STATION RECORDS.

RULE 11. Each utility shall keep a record of the time of starting and shutting down power station equipment and feeders, together with the indication of the principal switchboard instruments at sufficiently frequent intervals to show the characteristics of the load; and shall maintain a record of all interruptions of service upon the entire system or major divisions of its system, and include in such record the time, duration and cause of each interruption.

METER READING ON BILLS.

RULE 12. Bills rendered periodically for metered electric service shall designate the reading of the meter at the beginning and end of the interval for which the bill is rendered, and shall give the dates on which the readings were taken, and other data necessary to enable the customer conveniently to check the bill.

INFORMATION.

RULE 13. Each utility supplying electric service shall, upon application, inform any of its consumers as to the conditions under which efficient service may be secured from its system, and render its consumers reasonable assistance in securing incandescent lamps and other appliances best adapted to the service furnished. It shall adopt some method of informing its consumers as to the reading of meters, by printing on bills either a description of such

method, or a notice to the effect that the method will be explained on application to the utility meter reader. Where meters for more than one consumer are installed in proximity to each other, each meter shall be marked or tagged with the name of the consumer whose service is measured thereby.

VOLTAGE VARIATION.*

RULE 14. Each utility which in any year shall have sold more than 50,000 kilowatt hours, or have had more than fifty consumers shall adopt a standard voltage for the entire constant potential system (or major division thereof approved by the Commission), and shall maintain the voltage within 3 per cent. below, and 5 per cent. above, such standard on all lighting circuits during lighting hours, and on power circuits and on lighting circuits during other than lighting hours within 10 per cent. of such standard. All other utilities shall maintain their voltage regulation on all constant potential lighting circuits during lighting hours, so that the maximum voltage furnished any consumer shall not be more than 10 per cent. above the minimum.

VOLTAGE SURVEYS.

RULE 15. Each utility which in any year shall have sold more than 50,000 kilowatt hours, or have had more than fifty consumers, shall provide itself with one or more port-

* The fluctuations in voltage permitted by this rule may, upon first consideration, appear to be excessive, but in view of the conditions existing in many parts of the State, a more exacting requirement at this time might work an undue hardship upon some of the utilities. A closer regulation may be expected to be practical in the future. It may be that some utilities cannot immediately meet the requirements of the rule as now made, since such requirements may involve the redesign and reconstruction of distribution systems, or the installation of regulating devices. In any such case application may be made to the Commission for a temporary suspension, or a modification of the rule to meet the reasonable requirements of the particular situation, and in such case the Commission will make investigation and will take such action as may be in fact reasonably necessary. Momentary fluctuations in voltage resulting from the proper operation of the plant shall not be considered a violation of this rule.

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able recording or curve drawing voltmeters, of a type and capacity suited to the voltage supplied, and shall make a sufficient number of voltage tests upon different parts of its system to indicate that the service furnished is in compliance with the voltage requirements. One of these recording voltmeters shall be kept in continuous service at the plant or office, or on some consumer's premises. All voltage records shall be kept open to public inspection at the office of the utility.

COMMISSION INSPECTION.

RULE 16: The Commission will, from time to time, inspect the works and system of each utility, and the manner in which each such utility conforms to the rules and regulations herein contained. Under the provisions of Section 2 of Chapter 124 of the Laws of 1913 a fee of not more than \$15.00 will be collected by the Commission from the utility for each such inspection. In any case where the character of the service is such as to require extended investigation, a fee sufficient to cover the cost thereof to the Commission will be collected.

COMPLAINTS.

RULE 17. Each utility shall keep a record of all complaints in regard to service which shall include the name and address of the consumer, the date, the nature of the complaint and the date and method of disposition.

REPORTS.

RULE 18. Each utility at such times and in such form as the Commission shall require, shall report to the Commission the result of voltage surveys, interruptions of service, and the number of meters purchased, installed, removed from service and tested.

HOBART PILLSBURY *et al.* v. PEOPLE'S GAS LIGHT COMPANY:
INVESTIGATION OF RATES AND SERVICE IN MANCHESTER.

Order No. 315.

Investigation Ordered August 1, 1913 — Decided June 10, 1914.

(4 N. H. P. S. C. R. 337).

Reduction of Rates for Gas.

Investigation upon petition by residents of Manchester into the price charged for gas in that city and into the quality of gas supplied.

Scope of Investigation.

The Commission found that the respondent was supplying gas of good quality and consequently confined its investigation to an inquiry into the reasonableness of the respondent's rates.

In order to determine the fair value for rate purposes of the respondent's properties, the Commission investigated the entire history of the properties and of the corporations owning them, with a view to discovering the original cost, the cost of additions, the cost of reproducing the existing properties, the extent of depreciation, the securities outstanding, the amount originally paid in by security holders, the extent to which this amount was invested in property now devoted to the public service, and the operating expenses and operating revenues under existing rates.

Fair Value — Reproduction Cost and Original Cost Merely Evidences of Value.

Held: That reproduction cost is not the absolute measure of value any more than original cost, both being but evidences of value to be given such relative weight as indicated by the circumstances of the particular case.

Paving Laid by City Necessitates Increase in Company's Depreciation Reserve but not in Value of Property — Original Cost of Paving Laid by Company.

Held: That to increase the value of the respondent's properties, and thereby the rate which it may charge, on account of paving laid by the city, to which the respondent has not contributed except in common with all other taxpayers, would seem to penalize improvements and to give to the respondent a wholly unearned revenue;

That the only economic effect of the laying by the city of paving over mains is to make it probable that the replacement will be more expensive and thereby to increase proportionately the amount which should be set aside by the company for a depreciation reserve, but as depreciation must be cared for out of rates, any increase in the amount necessary for depreciation may be disregarded in fixing the value upon which the rates are to be based;

That paving laid by the city over mains forms no part of the utility's property and consequently no analogy exists to increments in the value of land owned by the utility;

That in making a finding as to value more weight will be given to the evidence as to the original cost to the company of paving over mains than to the reproduction cost.

Preliminary and Financing Costs.

Held: That any actual expenditures for "preliminary and financing costs" may properly be shown as part of the original cost, but such costs have no part in reproduction cost for the reason that the cost of reproduction represents the amount of money which it would cost to reproduce a property, assuming that a person desires to reproduce it and has the money to do so, and does not include the cost of persuading him to reproduce it or his expense in borrowing the necessary money.

The Commission refused to make any allowance for "preliminary and financing costs," for the reason that there was no evidence of any actual expenditures for such purposes.

Going Value — Attached Business — Losses Suffered in Building up Business — Relevant Facts in Determining Fair Value of Property as an Entity.

The Commission's discussion of going value includes an exhaustive review of the court and commission cases in which the subject has been considered.

The Commission found that the respondent's customers were in part attached by reason of a natural demand for gas service in the community and without other expense than that represented by the cost of its physical properties, and in part attached by reason of expenditures made by the respondent in order to increase the demand for its service, such expenditures, however, having been made out of operating expenses with money collected in rates and a full return having been paid at all times to stockholders.

Held: That it is good public policy to require money expended in securing new business to be paid out of operating revenues, and such is the practice of many Commissions:

That business attached without any cost and business attached by expenditures made good out of rates without any cost to stockholders either in money advanced or in dividends foregone should not go to increase the value of public utility property;

That it is impossible properly to estimate the value of the going concern element separately from the physical property of which it is an inherent part, and the plant must be valued, not as a collection of dead units, but as a going concern, consideration being given to the attached business and to actual losses sustained in building up the business.

Value of Land — Land Acquired in Anticipation of Future Needs — Land not Needed for Public Service — Increment in Value of Land.

The Commission found that the value placed on the respondent's land by the latter's local real estate experts approximated the price which it would be necessary to pay to secure the lots at that time and the price at which they could be sold if held to await a favorable opportunity for a sale and disposed of in lots to suit purchasers, the owners paying the expense of sale.

The Commission excluded, however, the value of tracts not then used which would not thereafter be used at all or within such reasonable time as to render it just to include their value.

Held: That the value of land acquired in anticipation of future needs and in the exercise of good business judgment should be included but that the inclusion rested on grounds of public policy and not on legal right, and such lands should not be included when the unused land has increased in value, subsequent to purchase, sufficiently to assure a reasonable return to the owners on the investment therein, or when the increase in value of land actually used is so great as to give the owners a generous return on their investment without including the unused property;

That in view of the state of the authorities, land should be taken at its present value, including increments in value, without regard to original cost.

Working Capital — Stores and Supplies — Working Fund — Current Street Main Extensions — Bank Balance.

The Commission refused to accept the difference between cash and accounts receivable and accounts payable and to become payable, as a correct measure of the working capital additional to stores and supplies, and refused to admit the necessity of allowing \$15,000 as a bank deposit to induce a bank to carry the respondent's account. It found that a fair working capital would comprise the amount invested in stores and supplies, operating expenses for a reasonable period, and a reasonable amount for current street main extensions. \$75,000 for stores and supplies was regarded as sufficient.

Held: That capital invested in stores and supplies and working fund is just as much devoted to the public use as any portion of the company's plant and must be included in the value upon which rates are fixed; that if a utility in fact provides itself with a working capital sufficient to carry materials and pay for labor for extensions without borrowing, the capital so provided and necessary for such purposes may be allowed as a part of the value upon which rates are to be based but in such a case no allowance for interest during construction should be included in the cost of extensions since no actual expenditure therefor has been made.

Accrued Depreciation — Depreciated Value Plus Depreciation Reserve as Basis for Rates — Additions to Plant out of Earnings.

The respondent argued that accrued depreciation should be disregarded in fixing the value for rate purposes so long as the efficiency of the property was maintained.

In response to this the Commission pointed out that, coincident with the replacement of depreciated units during any given year after the establishment of a rate, a further depreciation of other units would have accrued, so that the depreciated value after the substitution would not vary materially from the depreciated value at the time of fixing the rate; and that when an adequate depreciation reserve is maintained the value of physical property will not ordinarily fluctuate by reason of depreciation.

Held: That the depreciation reserve should equal the average yearly depreciation but should not exceed it and that the utility ought to be permitted to keep its plant good out of the rates collected, but not to increase its value;

That if the depreciation reserve is adequate and is invested in additions to plant, the utility will at all times have invested in plant the full amount of the original properties, and a return upon the depreciated value of the original properties and upon the value of the conditions representing the depreciation reserve including any amount in the course of investment, will give the utility all that it is justly entitled to;

That when a very large part of the plant has been built out of earnings in addition to the payment of generous returns on the original investment, it would be unjust to the public to require a return to be paid on the undepreciated value of the original property and also on extensions made out of the depreciation fund;

That the Commission will treat additions and betterments as a depreciation reserve to the extent of the depreciation which has actually occurred, including not only physical depreciation arising from age, use and natural deterioration, but functional depreciation as well, arising from changes in the art which render the substitution of other physical units desirable or arising from any occurrence other than physical deterioration which in fact lessens the usefulness and value of the property in question;

That when the investment in additions does not equal the amount of depreciation, the Commission will give such weight only to accrued depreciation as may be just to the utility, but this does not mean that the supposed liability of stockholders to keep the property in efficient operating condition may be substituted for any portion of the value of the property withdrawn in dividends which should have been placed in a depreciation fund or reinvested in the plant, since actual experience proves it so difficult to realize upon this supposed liability that it is unsafe to encourage its substitution for the actual provision against depreciation;

That under the authorities, the utility is entitled to the full benefit of ownership in any additions to plant out of earnings, in excess of the amount of accrued depreciation.

Practicability of Increase in Efficiency by Discarding Obsolete Equipment — Relevant Factor in Determining Fair Value.

Held: That the immediate replacement of certain machinery by modern equipment would increase efficiency and result in a saving equivalent to a profit, and this fact must be considered in fixing the value for rate purposes.

Excess Capacity.

Held: That although the authorities would justify disregarding excess capacity in fixing value for rate purposes, the value represented by the excess capacity of the respondent's gas holders will not be excluded for the reason that the respondent exercised good business judgment in building somewhat in advance of the existing demand and no accretion in value can be expected on this property.

Investment in Outside Securities.

Held: That money invested in the securities of other corporations is not devoted to the public use and not entitled to earn a return through the operation of the utility property.

Market Value of Securities.

Held: That the market value of the respondent's outstanding securities is so largely affected by circumstances having little relation to the true value of the property, such as earnings resulting from the exaction of unreasonable rates, that it would be unjust to attach any considerable weight to evidence of such market value.

Minimum Return on Investment — Rate of Return — Return on Additions to Property out of Surplus Earnings.

The Commission found that the stockholders of the Manchester Gas Light Company, which was the lessor of the People's Gas Light Company, had received 24 per cent. per annum on their original investment, and that the stockholders of the People's company had received an average return of 14.08 per cent.

Held: That in any rate case it is impossible to fix the rate so as to provide an exact percentage of return to capital, and the only purpose of making a finding as to value, or a finding as to a fair rate of return, is to discover the amount below which the net profits from the operation of the property in question must not be carried by any reductions in rates.

That considering that no public utility enterprise in New Hampshire has a more certain prospect of continued prosperity, as is evidenced by the fact that its stock sells upon a 5 per cent. basis, and considering

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that the legal rate of interest in the State is but 6 per cent. and that money is freely offered on good real estate loans for 5 per cent., a dividend limited to 6 per cent. on the capitalized fair value of the Manchester gas properties would enable the stock to sell at par or better;

That if the fact that property has in part been built up out of surplus earnings, in addition to the payment of a full return to stockholders, may be taken into consideration in fixing the rate, a rate yielding a return of less than 6 per cent. would not be confiscatory in this case, but on account of the considerable doubt existing upon this point and in order to avoid any danger of infringing the respondent's constitutional rights, 6 per cent. is adopted as the minimum in this case.

Value of Property.

The company claimed a value of \$1,778,168 and the right to earn 8 per cent. thereon as dividends. The engineers employed by the Commission found the cost of reproduction to be \$1,060,451 and the cost of reproduction less depreciation, \$855,120, both sums including an allowance of 15 per cent. for overhead charges. The Commission's final finding as to the fair value of the property was that it did not exceed \$900,000, upon which the Commission found that \$54,000 (6%) was a fair return below which the respondent's net revenue should not be reduced in any event after an allowance for current depreciation had been made.

Provision for Current Depreciation.

The company claimed an annual allowance of \$16,200 for depreciation.

Held: That the only depreciation which consumers in the future can be asked to make good is that depreciation which accrues in the future, the rates in the past having been quite sufficient to pay the full return on capital and cover accruing depreciation;

That if the stockholders had not provided against accrued depreciation by making additions to plant, the burden of restoring the property would properly fall on them and not on the consumers through excessive charges for depreciation;

That the depreciation of the Manchester gas properties is not rapid and that an annual reservation considerably less than that suggested by the respondent would meet the necessities of the case.

Allowance for Taxes.

In estimating the respondent's normal operating expenses, the Commission assumed that the properties devoted to public use would not be appraised in excess of \$900,000.

Held: That whatever tax is necessarily paid must be provided for in the rate collected, and if the respondent is required to pay a larger tax than that assumed, and by reason of that fact its net earnings under efficient operation are brought below a sum sufficient to pay a fair return, application may be made for a change in the rate.

Discount for Prompt Payment.

Held: That it is lawful to make a distinction in rates between the customer who pays promptly and the one who does not, and the interest of the public which must pay the expense of making collections, as well as the interest of the utility, will be subserved by a rule which will facilitate the prompt payment of bills;

That a discount applying equally to all customers so that each may secure a lower rate by paying his bill promptly as it is his duty to do, cannot be considered unjust or unreasonable, but a sufficient number of days should be allowed within which customers may take advantage of the opportunity to pay a lower rate and the increase in the amount to be paid should not be disproportionate to any possible inconvenience which may accrue to the utility in consequence of the delay;

That any utility may provide in its rate schedule for a discount for prompt payment.

Minimum Bill.

Held: That the general expenditures ordinarily designated as "consumer costs" amount in the aggregate to a very large sum annually and an equitable portion of the same must be paid by each consumer, in addition to interest and depreciation on his meter and service pipe, or he will be served at a loss to the utility which must in turn be made up by other rate payers;

That in fixing a minimum bill the aim should be to fix such an amount as will insure the utility against loss by reason of the connection of any consumer, assuming the utility in existence with its mains in the streets ready to meet the demand of those desiring service; and if the minimum bill is computed to cover merely those costs which vary largely with the number of consumers, it will insure the utility against loss by the taking on of consumers and at the same time make gas service available for the greatest possible number in accordance with good public policy;

That the adoption of the schedule of minimum charges fixed by the Commission will have the effect of reducing somewhat the respondent's operating expenses, and will produce a reasonable increase in revenue from a class of consumers who have heretofore paid less than it has cost to serve them.

Reduction of Rate.

The rate charged by the respondent was \$1.10 per thousand cubic feet without discount for prompt payment.

The Commission found that the net earnings of the respondent prior to 1912 could not be held to yield an excessive return on \$900,000, but that since that time, although the net profits for 1913 showed no increase owing to abnormal expenses, the volume of business had increased to such an extent that a reduction in rates was possible.

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Held: That a just and reasonable maximum net rate for gas in Manchester does not exceed \$1.00 per thousand cubic feet, which will provide for all operating expenses, depreciation and a net return of somewhat more than \$54,000 annually;

That at a rate of 90 cents, or even 95 cents, per thousand cubic feet, a net return of \$54,000 probably could not be earned.

The Commission's order provided for the establishment of a gross rate of \$1.10 per thousand cubic feet with a discount for prompt payment of 10 cents per thousand cubic feet if payment were made within such number of days, not less than ten, as the respondent might allow. The order also established a scale of monthly minimum meter charges.*

APPEARANCES:

Hobart Pillsbury, for the petitioner.

Edwin F. Jones and *Benjamin W. Couch*, for the People's Gas Light Company.

REPORT.

BENTON, *Commissioner*:

This proceeding had its origin in a petition filed on March 31, 1913, by Hobart Pillsbury and forty-one other representatives and senators from the city of Manchester, requesting the Commission to investigate the People's Gas Light Company * * with a view to determining whether or not the company can afford to reduce the price of the gas and to improve its quality."

While the Commission is not required by law to investigate any public utility in cities of more than 30,000 population except upon the petition of the mayor, or city councils, or of not less than 100 customers of such public utility, the Commission felt that a petition signed by practically the entire delegation to the general court from the city of Manchester ought not to be disregarded on any technical ground. Accordingly, on August 1, 1913, the Commission, upon its own motion, ordered a hearing on September 16, 1913, "for the purpose of determining whether the rates and charges by the People's Gas Light Company, or the rules or regulations of such utility are unjust or unreasonable, or * * whether the gas supplied to the public by said public utility is of reasonably good quality."

* Editor's headnote.

On September 16, 1913, the hearing was postponed till October 2, 1913, when it was opened in the city hall in Manchester, and all persons then appearing in support of the petition were fully heard. Continued formal hearings were later held at the office of the Commission in Concord on February 2, 3, 4 and 12, and on March 25, 1914. While these hearings were proceeding, and as a part of the same, the Commission on February 5, 1914, took a view, and made a careful personal inspection of the properties operated by the respondent.

After the filing of the petition before mentioned, and the making of the order for the hearing in this case, the Commission in another proceeding made Order No. 252, "*Prescribing Standards of Purity, Pressure and Heating Value of Gas, and Providing for the Periodic Testing Thereof, and for the Testing of Meters, and Otherwise Regulating the Service of Gas Utilities.*"

This order was served upon all of the gas utilities in the State, including the respondent, and the inspections since made by the Commission, and the reports to the Commission of the frequent tests required under the order to be made and reported by the respondent, indicate that the respondent is supplying gas of good quality, and the Commission so finds. Accordingly, in the report, we shall have occasion to consider only the question whether the charges now made and demanded by the respondent corporation are just and reasonable.

RESPONDENT'S CLAIMS.

The respondent claims that even under existing rates it is earning less than a fair rate of return upon the value of its property, which value it claims to be as follows:

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Cost of reproducing structures, apparatus, distribution system and other physical properties except land, without allowances for overhead expense.....	\$1,060,296
Overhead allowances for reproducing above physical properties, 18 per cent.....	190,853
Land	162,500
Contingent fee on land	4,063
Interest during construction on cost of land.....	9,750
TOTAL COST OF ALL PHYSICAL PROPERTIES.....	\$1,427,462
Preliminary and financing costs and cost of attaching business	240,000
Materials and supplies	55,706
Additional working capital	55,000
GRAND TOTAL	\$1,778,168

Upon this amount the respondent claims the right to earn 8 per cent. per annum for distribution to the owners of the properties in rental and dividends, in addition to not less than \$16,200 per annum to be held as a depreciation reserve, making necessary a total net operating revenue of \$158,453. If the returns to owners were to be reckoned upon a 6 per cent. basis, rather than upon an 8 per cent. basis, the annual net earnings required, allowing for the depreciation reserve claimed, would be \$122,890.

In the year ending June 30, 1913, the total net operating revenue of the respondent was \$82,047; in the year previous it was \$93,458. In no other year has it equalled the latter sum.

It is at once evident that, if the value claimed by the respondent is not excessive, the price of gas in Manchester cannot be justly reduced, but ought to be permitted to be increased, if the respondent so wishes.

SCOPE OF THE INVESTIGATION.

In order to determine the fair value for rate purposes of the properties operated by the respondent, we have deemed it necessary to make a careful investigation covering the entire history of those properties, and of the corporations

by which they are owned, with a view to discovering, as far as possible, the original cost of the properties, the cost of additions thereto, the cost of reproducing the existing properties, the extent to which they have become depreciated, the securities outstanding against the same, the amounts originally paid in by security holders, and the extent to which the amounts so paid in were invested in the properties now devoted to public use, the operating expense and operating revenues under existing rates, and all other relevant facts which would aid us in arriving at a just conclusion.

As a part of such investigation, we have caused the physical properties to be examined in detail by Messrs. Sloan, Huddle, Feustel and Freeman, of Madison, Wisconsin, who prepared an inventory showing each unit of property, the estimated cost of reproducing the same to-day, and the amount of such cost less the estimated accrued depreciation thereon. Mr. Huddle, who had general charge of the preparation of said inventory, presented the same at the formal hearing, and testified in support thereof. Mr. Feustel, who assisted in the appraisal work, was offered for examination, but examination was waived by counsel for respondents.

In the making of the investigation we have been very much aided by the courteous co-operation of the officials of the respondent company, who have promptly complied with our numerous requests for information, many of which have entailed much labor upon them, and who in all ways have cheerfully sought to afford us convenient opportunity for the ascertainment of such facts as we deemed essential to a proper disposition of the case.

HISTORY.

The original Manchester gas properties were constructed by the Manchester Gas Light Company, hereinafter called the Manchester company, in 1852, and were operated by that corporation without competition until 1887. In that year Mr. W. L. Elkins, Mr. W. L. Elkins, Jr., Mr. P. A.

Widener, and Mr. Martin Maloney, all of Philadelphia, appeared in Manchester, and, associating themselves with various substantial citizens, organized under the general law the People's Gas Light Company, hereinafter called the People's company, or the respondent. The People's company was granted a franchise by the city councils and immediately began construction work towards the erection of a competing plant. Negotiations followed, and resulted in a contract between the two corporations dated June 28, 1887, of which the essential portions were as follows:

"WHEREAS, The Manchester Gas Light Company, a corporation by that name, duly established by and under the laws of the State of New Hampshire, located at Manchester, in the county of Hillsborough in said State, has heretofore solely manufactured and distributed gas in the city of Manchester, for the purpose of lighting the streets, dwellings, shops, stores, manufactories and other places therein:

"AND WHEREAS, the People's Gas Light Company, also a corporation by that name duly established by and under the laws of said State and located at Manchester aforesaid, has recently been organized in said Manchester and has commenced works for the manufacture and distribution of gas therein;

"AND WHEREAS, controversies, opposition and strife may arise between said companies, detrimental to both, and injurious to the public.

"NOW THEREFORE, for the more quiet, cheaper and more satisfactory manufacture of gas in said city, it is agreed by and between said companies as follows, to wit:

"The said Manchester Gas Light Company being known as the party of the first part, and the said People's Gas Light Company as the party of the second part. The party of the first part agrees that it will allow and permit the party of the second part, to occupy and use the land, buildings, tools, machinery, office furniture, pipes meters and lamps belonging to the party of the first part and now used by them for the manufacture, storage, distribution and sale of illuminating gas for the fifty years next ensuing after the first day of July, 1887, said land being all situate in said Manchester and described as follows, to wit: * * *

"The party of the first part further agrees, that it will, during the said term, keep its corporate organization in force, by due regard to its by-laws and the provisions of the statutes of this State relating to corporations, and will so exercise its franchises, as to secure to the party of the second part, the full benefit of this agreement, without detriment to the party of the first part. That it will not engage in the manufacture and distribution of illuminating or heating gas or electricity in said Manchester during said term, without consent in writing of the party of the

second part. That the party of the second part will during the existence of this contract, in due season pay and discharge all taxes and other assessments, not occasioned by act of the party of the first part which may be assessed or levied by lawful authority upon the premises and upon all improvements, occasions and betterments which may hereafter be made, added or placed thereon. And in case the mode of taxation should be changed by law so that the tax on the premises instead of being assessed and levied against the corporation as is now the law, it should hereafter be assessed and levied against the shares or stockholders, the party of the second part, will in such cases, pay the tax so assessed and levied. * * *

"That the said party of the second part * * * will at all times during the existence of this contract, at its own cost and expense keep the buildings herein described insured in such insurance companies as the party of the first part may approve in at least the sum of twenty thousand dollars (\$20,000) properly apportioned on said buildings in accordance with the value and hazard thereof. * * *

"That the party of the second part will not erect during the term aforesaid any other gas works in said Manchester nor carry on the business of manufacturing, generating or distributing illuminating or heating gas at any other place in said Manchester than on the said premises without consent in writing of the party of the first part.

"That it will at all times during the existence of this contract, continue the manufacture of illuminating gas on said premises, and will distribute and furnish the same to the city, citizens and various manufacturing and mechanical companies in said Manchester, in like manner as has heretofore been done by the party of the first part not binding itself thereby to furnish coal gas only. * * *

"That it will not during the existence of this contract suffer any strips or waste or unnecessary diminution of the value of said property, but will from time to time cause all necessary repairs and reparation to be made thereto seasonably at its own cost and expense, wholly without cost or expense to the party of the first part and will at the end or other termination of this contract, quit and deliver up to the party of the first part, all and singular the said premises with all the additions made thereto in as good order and condition as the same are now in or may be put into by the said party of the second part, the ordinary wear and tear with proper and careful usage thereof alone excepted. * *

"That the party of the second part will pay the said party of the first part, the sum of thirty-two thousand five hundred dollars (\$32,500) as the annual rent of said premises, payable as follows: Five hundred dollars at the end of each and every year and the balance of thirty-two thousand dollars in equal quarterly payments of eight thousand dollars (\$8,000) on the first days of April, July, October and January of each and every year and whenever any of said days shall be Sunday, the said payments shall be made on the day succeeding, the first payment to be made on the first day of October, 1887. * * *

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"That the party of the second part will deliver to the party of the first part as collateral security, for the performance of the promises and agreements herein entered into, a bond of the Philadelphia Trust and Safe Deposit Company in the penal sum of fifty thousand dollars (\$50,000) and will not allow the value and sufficiency of said security to become impaired while it shall remain in the hands of the party of the first part, and if the value of said security shall be impaired it will furnish other good and sufficient security to a like amount, and said bonds shall be surrendered, whenever in the opinion of the party of the first part the party of the second part shall have made, erected or placed upon the premises above described, improvements, betterments and additions of the value of fifty thousand dollars (\$50,000) not including the amount to be expended by the party of the second part to establish, erect and equip a water gas plant. * * *

"That the party of the second part shall have the option to purchase the whole of the said property and all franchises assignable and connected therewith, of the party of the first part, for the price or sum of one million dollars (\$1,000,000) but this option must be exercised during the existence of this contract and the cash payment must be made before or at the time of its expiration. Such option may not be so exercised that the party of the second part will not be liable to pay the stipulated rent during the whole of the term of fifty years. * * *

"IN WITNESS WHEREOF, * * * this twenty-eighth day of June, A. D. eighteen hundred and eighty-seven.

The Manchester Gas Light Company
by

MOODY CURRIER,
NATHAN PARKER,
DANIEL CLARK,
C. F. WARREN,
G. B. CHANDLER,
Directors.

(SEAL)

The People's Gas Light Company

W. L. ELKINS, *President.*

WM. L. ELKINS, Jr., *Treasurer.*

(SEAL)

"We the undersigned are all stockholders of the People's Gas Light Company; we do approve of the foregoing contract and hereby consent and agree to all and singular the matters and things therein contained. Dated June 28, 1887.

FRANK DOWST
A. ELLIOTT
P. A. B. WIDENER
W. L. ELKINS
WM. L. ELKINS, Jr.

JOHN B. VARICK
MARTIN MALONEY
N. W. ELLIS
JAMES F. BRIGGS."

Since July 1, 1887, the properties have been operated by the People's company. The participation of the Messrs. Elkins, Widener and Maloney in the management of the corporation did not, however, continue subsequent to 1891. In that year they disposed of their stock to the United Gas Improvement Company of Philadelphia, which corporation has since held the controlling interest, and, to all intents and purposes, has managed the respondent's properties.

Since 1887 several new structures have been erected, much of the most valuable machinery and apparatus has been installed, and the major portion of the distribution system has been laid down. It is, however, entirely practicable to separate the property added by the respondent from that which passed to it under the contract, and for the purpose of getting a clear view of the precise situation, that has been done.

It does not, however, appear to us that the terms of the contract between the two companies, or the proportion in which the properties are owned by each, are of any particular importance in this case. The question to be determined is whether the price now charged for gas in Manchester is more than sufficient to pay a fair return upon the value of the properties used in supplying gas. We may consider the case as if there were but one company, with a continuous history since 1852.

STRUCTURES, APPARATUS, DISTRIBUTION SYSTEM, AND MISCELLANEOUS PROPERTIES.

A summary statement showing the estimated reproduction cost, and the reproduction cost less estimated accrued depreciation, of all the properties, except land, operated by the respondent, according to the Sloan, Huddle, Feustel and Freeman inventory, follows:

COMBINED PROPERTIES OF MANCHESTER AND PEOPLE'S
COMPANIES.

SLOAN, HUDDLE, FEUSTEL AND FREEMAN INVENTORY.

	Cost of reproduction	Less depreciation
Buildings	\$110,673	\$94,137
Apparatus	114,170	76,875
Holders and housings.....	223,865	181,467
Oil storage tanks.....	5,370	3,776
Yard structures and miscellaneous.....	52,837	40,485
Distribution system	415,226	346,843
TOTAL	\$922,131	\$743,583
Overhead allowances, 15 per cent.....	138,320	111,537
TOTAL ESTIMATED COST OF REPRODUCTION...	\$1,060,451	\$855,120

Apportioned to show such cost and depreciation of those properties which came to the respondent from the Manchester company, and of the properties since added by the respondent, the inventory totals are as follows:

MANCHESTER COMPANY PROPERTIES.

SLOAN, HUDDLE, FEUSTEL AND FREEMAN INVENTORY.

	Reconstruction cost, except overhead	Including overhead	Reconstruction cost, except overhead, less depreciation	Reconstruction including overhead, less depreciation
Buildings, apparatus and miscellaneous properties	\$302,242	\$347,578	\$218,669	\$251,469
Distribution system *.....	140,615	161,707	109,918	128,406
TOTAL	\$442,857	\$509,285	\$328,587	\$377,875

PEOPLE'S COMPANY PROPERTIES.

SLOAN, HUDDLE, FEUSTEL AND FREEMAN INVENTORY.

Buildings, apparatus and miscellaneous properties	\$204,663	\$235,362	\$178,071	\$204,781
Distribution system *	274,611	315,803	236,925	272,464
TOTAL	\$479,274	\$551,165	\$414,996	\$477,245

Mr. William McClellan, of New York City, made a like inventory for the respondent, and supported the same by testimony at the hearing. His estimate of the cost of reproducing the above mentioned properties operated by the respondent, and of the amount of accrued depreciation thereon was as follows:

* In this table the street mains laid between July 1, 1887, and January 1, 1891, are estimated on the basis of the quantity laid in 1891, and immediately thereafter, no record of street mains laid prior to 1891 being available.

COMBINED PROPERTIES OF THE MANCHESTER AND PEOPLE'S COMPANIES.

McCLELLAN INVENTORY.

	<i>Cost of reproduction</i>	<i>Less depreciation</i>
Buildings	\$121,424	\$109,388
Apparatus	116,715	94,162
Holders	235,651	217,202
Mains, etc., including paving*.....	397,966	352,000
Meters and meter connections.....	113,224	100,196
Other property	73,316	64,858
TOTAL	\$1,060,296	\$937,806
Overhead allowances, 18 per cent.....	190,853	179,784
TOTAL REPRODUCTION COST	\$1,251,149	\$1,117,590

Respondent's counsel urge that an average between the estimates of the two engineers be taken as the reproduction cost of the properties in question. That suggestion does not appeal to us. It is an easy method of disposing of differences between witnesses, but we are unable to perceive how it conduces towards accuracy. Our engineers were selected with the purpose merely of securing thoroughly competent men. They have for many years been engaged in valuation work of this kind for the Wisconsin Commission, and for various other Commissions in this country and Canada. Mr. Feustel is now the chief engineer for the Illinois public service commission. In the several cases where this firm has done similar work for this Commission, we have been impressed with their thorough preparation for the work which they are doing, and with the entirely non-partisan spirit in which they act. Upon a full consideration of all the evidence in the case, we are satisfied that they have done full justice to the respondent in the estimates which they have made, and we accept such estimates as the best evidence before us as to the reproduction cost of the respondent's properties, and the extent of the depreciation thereof.

* This item includes \$90,831 for paving over mains, which is separately discussed later in this report.

PAVING.

Early in the investigation the Commission were informed by counsel for the respondent that claim would be made for allowance, as a part of the present value of the respondent's properties, of the cost of paving over mains, wherever pavements now exist. The Commission's engineers were, accordingly, instructed to include an item representing such an amount as in their opinion such cost would be, and also to report separately the amount of such cost as, from the books of the company, appeared actually to have been met by the respondent, or by the Manchester company.

Paving is shown upon the inventory presented by Mr. Huddle's firm as \$88,621 for cost of reproduction. Depreciated upon the same basis as the mains, upon the theory that at the end of the life of the present mains the paving will have to be again cut through, the depreciated cost is given as \$71,720. The actual amount paid for paving over mains, so far as shown by the books of the company, was \$1,940. Mr. McClellan estimated the cost of paving over mains to be \$90,831, and the depreciation thereon, computed upon the same theory as by Mr. Huddle, \$9,083.

It is claimed by the respondent that the item of \$1,940 did not fully represent expenditures for paving over mains; that when extensions were made on streets covered with tar concrete or through private sidewalks, the repairs were made by a local concreting company, and the expense paid by the respondent direct; that when short extensions were made upon macadamized streets the respondent replaced the paving without calling on the city; and that the \$1,940 item was the amount paid the city for paving work when extensions of considerable length were made.

It was admitted, however, that the entire amount paid by the respondent for paving appears upon the respondent's books as a part of the original cost of laying street mains. The full amount of the construction account for street mains

is \$132,590. This, however, it was testified did not include anything for superintendence and other overhead allowances which were paid as operating charges. To what extent overhead expenses were actually incurred no attempt was made to show. The reproduction cost of laying street mains as estimated by the engineers for the Commission, as we have already seen, was, without allowance for overhead charges, \$127,653, and including 15 per cent. for overhead, \$142,962. It is evident that there is no room in the construction account for any very large sums paid for paving over mains. In this connection, too, it should be remembered that the street mains have been laid from year to year, as the respondent's business has grown, and that piecemeal construction tends towards increased construction cost.

Upon the evidence we find that no considerable sum in excess of \$1,940 has been paid on account of paving over mains. The total sum may reach \$4,000 or \$5,000, but there is no evidence which warrants a conclusion that it exceeds the latter sum.

The argument upon this point is that it is immaterial whether paving was paid for by the respondent or by the city. Counsel argue that reproduction cost new is the best evidence of the present value; that such reproduction cost is of the plant as it now exists; that "to exclude the present additional cost due to paving where there was none when the pipes were laid, would result in a false reproduction cost of the existing plant, and would leave out of consideration a natural and important element of the present value, which is the end for which every inquiry is made." Counsel ask, "If (the utility) must bear any loss in value due to lessened present cost, why should it not have the reciprocal benefit due to increased present cost?"

The proposition that by paving the streets of their city the citizens of Manchester increase the value of the gas plant by which they are served, and the rate which they may be obliged to pay for gas, does not appeal to one's natural sense of justice. The change has undeniably in-

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creased the reproduction cost of the gas property; but has it increased its efficiency of operation, or its earning capacity, or has it lengthened its useful life? Not at all,—in fact the only economic effect of placing pavings over mains is to make it probable that the replacement will be more expensive, and thereby to increase proportionately the amount which should be set aside for a depreciation reserve. Speaking strictly in a commercial sense, this would lessen rather than increase the value; but as depreciation must be taken care of out of rates, any increase in depreciation may be disregarded in fixing the value upon which the rate is based.

To increase the value of the respondent's properties, and thereby the rate which it may charge, on account of paving to which it has not contributed except in common with all other tax payers, would seem to penalize improvement, and to give to the respondent a wholly unearned revenue. The case is not analogous to changes in the price of land, or in the cost of labor and materials included in buildings and other properties. There is good ground for argument that the owners of public utility properties should stand upon the same basis as all other persons, and share with the public the gains or losses resulting from the effect on property generally of business development or business depression. But the pavement forms no part of the utility's property, and the laying of the same leaves wholly unaffected the market value of land, labor and materials, and of everything which makes up the utility's property.

As a part of reproduction cost, paving over mains must be considered, but it does not follow that on that account we should add the total sum of such cost to the value, which, but for paving, would be fixed for the entire property operated by the respondent. Reproduction cost is not the absolute measure of value; it is but evidence of value. The respondent's counsel recognize this in their argument, but seek to treat it as controlling evidence. It is not controlling evidence any more than original cost is controlling evidence. Both are to be considered. And the fact that the cost to produce a given property has lessened, does not, as

a matter of law, lessen the value. If under all the circumstances original cost ought justly to outweigh reproduction cost in determining value, it does—and the rule works both ways. We will not cite authorities here, but the cases cited later in this report fully sustain this view.

Accordingly, in making our finding of value in this case we shall consider the entire reproduction cost of the properties, including the item carried for paving over mains, but we shall keep in mind the evidence showing the portion of the original cost of construction of gas properties which was in fact expended for paving over mains, and shall give more weight to such evidence as to original cost, with relation to that item, than to the reproduction cost, because, under the circumstances, that is just.

GOING VALUE.

One of the largest single items claimed by the respondent is for “going value,” \$240,000. The nature of this item can be best explained by including here a portion of the testimony of Mr. McClellan, the respondent’s valuation expert, who was the only witness offered in support of the same. Upon this point he said:

“The preliminary and financing costs * * are lumped together as \$240,000 with the so-called cost of attaching business. The first cost, the preliminary cost, call it what you please, promotion cost, is there in my opinion always. In other words, it is inconceivable that a group of contractors and engineers and financial men could suddenly drop into any town and immediately start, make plans to construct, and spend money on a structure. Two sets of people have got to be satisfied before anything of that sort can be done. First, the people who have got to spend the effort in order to produce the plant, * * and, secondly, the bankers and individuals, I care not who, who have got to supply the money. Both of those people have got to be convinced that it is a fairly good thing. That takes investigation, time and expense and that is what I mean by preliminary expense. It is very difficult to state what it is. It varies a lot. I have seen sworn statements of actual expenditures varying in amount depending upon the magnitude of the property. A great many men sometimes do it because they expect future reward. That is the old way, they expect to get dividends on stock and things of that kind, but nevertheless they contribute the effort and contribute the expense for the

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benefit of the community. * * The third expense is the cost of attaching business. Now it is probable in most cases that a plant, an aggregation of physical parts without any earning power attached to it at all is worth less than the same set of parts with an earning power attached and ready to take care of itself without anybody having to contribute anything more except what they get a fair return for. How much that is worth has been estimated in a great variety of ways, especially since the days it has had to be estimated before commissions and courts. * * How to get at that value is a serious question. First, some people say that it is a certain percentage of this other cost that we have had that we have estimated the actual physical cost. There is no warrant for it except experience and judgment of people who have been in the business. For example, it can be from 15 to 25 per cent. sometimes even higher. I do not know of any that are lower. If we take a million and a half, in round numbers, as the value of this property on a reproduction basis and take 15 per cent. then you would have \$225,000. Take 20 per cent. of course it is \$300,000. If you lower the reproduction value and take 20 per cent. it is \$225,000. I offer that as sort of an indication of the magnitude. There are other men who will say that it is worth \$20.00 a meter. They say that because those men who have operated a great many of these properties and figured over the accounts have come to the conclusion that it is worth \$20.00 a meter to connect that amount of business from the profit that could be obtained from it afterwards. * * Professor Humphreys, the president of Stevens Institute and probably the dean of gas men in this country, a man who owing to his position and his very, very wide experience is our first authority, says that it is worth a year's annual business, gross income. * * Now I have probably a somewhat different method of looking at it from the standpoint of reproducing the present business of the company. Let me say, in passing, that there have been numerous attempts to actually build up by certain highly approved methods this going element based on a great many assumptions. * * I think that after all there are so many assumptions in it that it is just as well to sort of condense it and get at it by a smaller number of assumptions. I am not turning this into a mathematical calculation. I am trying to get at the magnitude of the figure rather than any exactness about it. If we assume that we have started to reproduce this company, and at the end of the time when we were ready to deliver the product, gas, we had spent say \$900,000, and that we assume is fair under the reproduction idea, and that no houses are piped when we started * to build the plant, and * that people are not accustomed to use gas, and we have got to build up that sentiment as well as build our plant, we have really got to build that earning power and reproduce the business just as we reproduce the plant. * * If we assume at the time you are ready to deliver the product, you would have spent \$900,000; and if we assume further that it would take a period of five years to induce these people to

pipe their houses, induce them to spend their money for gas stoves and get ready to use this thing, * * — and I will say I am perfectly willing that somebody to assume something else — I assume five years, and if I assume further that at the end of five years I will have my million and a half spent, then I very quickly arrive at the average, that is the sum of the two and divided by two, \$1,200,000 during that five years as my average investment. If I assume a different number of years, I get different results, and again if I assume a fair return 10 per cent. or 8 per cent. but if I assume a fair return of 8 per cent. during that first year that I am building up this business, I know positively myself from experience that the company would be lucky that would make its full operating expense, in reproducing its business, if it would manage to get people enough to pipe houses and buy gas stoves to do it. It is quite clear that the owner who invested in the property, then would contribute that first year 8 per cent., and therefore their contribution on the average amount invested would be \$96,000. During the second year, if they made 3 per cent. on their average investment, I think they would be fortunate. * * They would drop that year 5 per cent. or \$60,000. The third year I think they ought to go up to 5 per cent. They would drop 3 per cent. or \$36,000. The fourth they would get 7 per cent. I will say. They would drop that year 1 per cent. or \$12,000, and the next year earn 8 per cent. and drop nothing. Add those amounts together and I get about \$204,000. * *

“Q. (By Mr. Benton) If you found out as a matter of fact that it had taken fifty years instead of five years, what difference would that make? A. That wouldn't make any difference at all in my general estimate of the thing for the simple reason that I am assuming they do this in five years and that means considerable expense for soliciting. If those who are doing this work are so poor they cannot supply the capital for this soliciting and building up this business quickly, it may take them ten years, but the total cost I assume through contribution under these circumstances would probably not be any greater. What they contribute in the way of operating expense would, so to speak, reduce what they contribute in the way of interest which they did not receive, and I am assuming * * that the investment was timely.”

By deducting the \$204,000 from Mr. McClellan's estimate of \$240,000, we learn that the portion of the larger item which should be allocated to what he terms preliminary and financing costs is \$36,000. As the nature of this cost, when incurred, is totally different from cost incurred in attaching business to the physical properties after they are constructed, we shall consider the two items separately.

PRELIMINARY AND FINANCING COSTS.

This claim we think does not call for any extended discussion. There is no evidence to support it. Mr. McClellan made it perfectly clear that he was testifying as to reproduction costs—"the total cost to reproduce the property and attached business," and that his estimate had nothing to do with what had actually been expended in producing the existing property and business. He said he had made no inspection of the books, and had no information.

In any rate case, both reproduction cost and original cost are important evidence, and greatly aid in making a finding of present fair value, but it is essential to keep the two as distinct as possible. And clearly preliminary and financing costs, as described by Mr. McClellan, have no part in reproduction cost. The reproduction cost of any property is the amount of money it would cost to reproduce that property, assuming a person desired to reproduce it, and had the money to do so. It does not include the cost of persuading him to reproduce it, or his expense in borrowing the necessary money after he is persuaded.

Expenses of this sort may have been incurred at the inception of a public utility enterprise. If they were we do not say that they may not be shown, with other original costs, as a part of the financial history of the enterprise, to receive such weight as ought justly to be attached to them. In such cases, however, it is incumbent on the utility to show by evidence that they were incurred. There is no such evidence here. On the contrary, we find that the money put into this enterprise by stockholders was, to borrow Mr. McClellan's language, invested "in the old way, expecting to get dividends upon stock and things of that kind."

ATTACHED BUSINESS.

The \$204,000 claimed for "attaching the business" will require more extended consideration. This item is claimed in addition to full reproduction cost and working capital.

Testimony of the general character offered by Mr. McClellan, based wholly upon arbitrary assumptions, and not upon the facts of this case as shown by the evidence, can be of little aid to us. Indeed, it is difficult to see how it is entitled to more consideration than the opinion of any other engineer of equal standing and reputation, which might be called to our attention from some published address, or from some text-book. It has no more relation to this case than to any other like valuation case which may at any time be before us.

The item claimed, however, is too important to be dismissed without careful consideration; and while we do not accept the respondent's evidence offered in support thereof as a reliable basis for determining what weight, if any, ought to be given to the "going value element," we do have before us as a result of our own investigation, information as to the origin and growth of these properties, the amount paid in and taken out by stockholders, the kind, character and reproduction cost of the present physical properties, the number of customers attached in 1891, and the number added each year since, the amount of gas sold in each such year, and the price at which sold, together with a great quantity of data showing expenditures in detail for a long term of years, and the net returns from operation.

This will enable us to make allowance for the going concern element as we have done in other cases where we have considered the "general financial history of the property so far as known, its earning power under reasonable rates, the amount of business which it does, the operating charges, and other pertinent facts" and have fixed "a final value on the entire property, not as upon a collection of dead units, but as upon a going concern doing the business which in the particular case it appears that it does." *Petition of Berlin Electric Company*,* 3 N. H. P. S. C. R. 174.

In the case just cited we also said:

"We believe that there is no constitutional rule nor any equitable reason requiring an appraisal of the entire expense of building up all of the business connected with a utility property, in a valuation of the same,

* Printed in Commission Leaflet No. 21, at page 781.—Ed.

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upon a strict reproductive cost basis, but that much weight should be given to the amount which the building up of such business, in the way it has actually been built, has actually cost the owners of the property, either in money originally invested by them or in returns not received upon their investment in early years."

If we understand the position of counsel for the respondent, however, they claim that the financial history of the utility is not to be considered in connection with the element of going value, and that attached business is to be given the same weight where the cost of building up the same has been paid out of operating expenses, in addition to reasonable returns upon capital invested, as where such cost has been paid by stockholders with money advanced or in dividends foregone.

Their argument is that it necessarily costs money to secure the attached business; that "because the company cannot show * * * that its stockholders went without some dividend, (or) * * * prove definitely early losses in business, furnishes * * * no excuse to say therefore there were no such expenses;" that the attached business is a characteristic of the physical property adding to its value; that it makes no difference whether the money expended in securing the same came from the stockholders or from rates; that it is now a part of the property of the company and cannot legally, in any part, be taken away by making less allowance, in fixing value for rate purposes, than would be made if it were shown that the business was built up with money actually advanced by stockholders.

Counsel for the respondents also assume that the going value element must be appraised as a separate item, and be added to the value of the physical properties, saying:

"We recognize that in this case we have furnished no figures or tangible evidence of any actual expense incurred * * * which the Commission can use as a basis for computing going concern value; * * * still * * * it is the duty of this Commission to in some way by the best evidence it can obtain determine what is the going concern value. * * * It is there. It has cost money to put it there, and the Commission is bound to recognize it, and to find what is its fair value."

Throughout their argument they have assumed that fair value for rate purposes is to be reached by the simple

process of adding certain amounts allowed for "working capital" and "going value" to the reproduction cost of the property as found.

To what extent the attached business of the respondent was secured by active effort at expense, and to what extent it resulted from natural demand, there is no evidence to show. In recent years there has been a very active competition between gas and electricity for lighting purposes in Manchester. At the same time sales for industrial uses to the Amoskeag and other large mills have greatly decreased. In 1889 such sales amounted to twenty-four million cubic feet; in 1904 they had decreased to twenty million cubic feet, and in 1913 to sixteen million cubic feet. New houses are now ordinarily wired for electric lighting, and use gas only for cooking and other similar domestic purposes. The effect upon the respondent is reflected in its expenses for new business. In 1889 expense for new business, if any, was not separately kept; in 1908 it was only \$1,173; in 1913 it had become \$12,177. But by thus energetically pushing the sale of its product, all losses in business have been offset, and a healthy increase in sales made. It is impossible to tell to what extent this expense for new business has been necessary to keep good losses suffered,—that is to hold the business where it was,—and to what extent it represents the cost of increasing the business.

The history of these properties extends over more than sixty years. A great part of the consumers became connected because they desired gas service, and the respondent's gas plant was the only one in Manchester. To the extent of the active demand for the service of which a public utility has a monopoly, customers are attached without expense, except the cost of services and meters, which are included in the physical property appraised. But a large increase in sales of gas for new uses cannot be quickly secured except at considerable expense for advertising, demonstrating, soliciting, and the like. The demand must be created before it can be supplied. The extent to which such expenditures may profitably be made is well illustrated

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here, where large losses in business have been met and made good, and the output steadily increased.

The facts in this case, then, so far as attached business is concerned, appear to be as follows: the respondent's customers were in part attached by reason of a natural demand for gas service in the community, and without other expense than is represented by the cost of its physical properties, and in some part by reason of expenditures made by the respondent to increase the demand for its service. The proportion which each class of customers bears to the whole is not known, nor is the amount of the expenditures made to secure the last mentioned class. Whatever such expenditures have been, however, the same have been paid out of operating expenses, with money collected in rates, and a full return has at all times been paid to stockholders.

Two questions arise upon the respondent's claim. First, should attached business be separately appraised and assigned a fixed and definite value apart from physical property, or does evidence as to attached business fall properly into the same category as evidence of original cost, amount and market value of securities, reproduction cost, operating expenses, and other related facts, all of which are important to be considered in arriving at the true value of the entire property, but none of which have a definite fixed value, the same in all cases? Second, must the same weight be given to business attached without cost to the stockholders (either actually without expense, or at the expense of the rate paying public) as would be given to such business if attached at the cost of the stockholders, either in money advanced or in dividends foregone?

This last question is of extreme importance. Public utilities are natural monopolies. In addition they are now by law granted a large degree of protection in the exclusive occupation of the territory which they serve. Growth in attached business inevitably follows growth in the community,—it may be accelerated by expenditures but is not dependent thereon. It is not too much to say, speaking generally, that most customers seek public utility service by reason of a natural, as distinguished from a created, de-

mand. Such customers cannot be said to be attached at any cost, except during the period that the plant is not paying expenses and a fair return upon the value thereof.

Does each customer, who voluntarily seeks service from a given public utility, add to the "fair value" upon which such public utility is entitled to a return, not only by the amount expended in physically connecting his premises with the plant of the public utility, but by a further amount estimated as the value of the opportunity thus afforded to the public utility to do business? Do the words "Nor shall any State deprive any person of life, liberty or property without due process of law" contain a guaranty to public service corporations that they may capitalize the demand for the service which they are given a franchise to supply, and may compel the public to pay a return to them thereon?

This question arises as to customers attached without expense. If the answer is in the affirmative, then the same privilege would, of course, exist as to customers attached at the expense of rate payers, since the increased value inheres by reason of the opportunity afforded to do business, and not by reason of expense incurred in securing that opportunity. But if attached business is to be considered as enhancing physical value only to the extent of expense incurred, still it would be unfortunate in the extreme if it should be discovered that there is a constitutional impediment to the meeting of that expense by the public in any other way than by adding it to plant value, and paying a return upon it perpetually.

It is undisputed that a public utility property should be kept good from operating revenues, rather than from the proceeds of security issues. This must apply to that portion of its property which consists of attached business, as well as to its physical properties. It is impossible to determine what new business results from natural demand, and what from expenditures made; or what portion of such expenditures were necessary to make good lost customers, and what portion may fairly be allocated to additions to business.

In view of these facts, this Commission has believed it to be good public policy to require money expended to secure new business to be paid out of operating revenues, and has refused to allow the same to be in any part capitalized. In *Petition of Laconia Gas and Electric Company*, 4 N. H. P. S. C. R. 52, the matter was discussed in part as follows:

"Are items of this class capitalizable? This is the other end of 'going value.' In rate cases utilities always claim the allowance of an item so designated in addition to the value of their physical properties, and in this item, as claimed, are always found allowances for 'advertising,' 'soliciting,' 'free piping,' and the like. Some Commissions in valuing properties have held that such an addition should be made. If the costs mentioned are to be added to plant values in valuation of utility properties for rate purposes, and rates sufficient to allow a fair annual return thereon are to be allowed, then they should be capitalized and not allowed to be charged to operating expenses.

"The reason is obvious. Rates pay both operating expenses and return on plant value. If additions to plant value are made from year to year out of operating expenses and returns earned on such added value, it is evident that the public will be taxed to pay returns upon value created by the public. The capitalization of advertising and other like expenses is logical, and in fairness to the public is inevitable, if attached business is always to be considered as giving 'going value' item which must be added to value of physical properties for rate purposes. * * *

"The life of a utility may be as prolonged as the life of the municipality in which it is situated. For the proper determination of all questions affecting either the municipality or the utility, a long look ahead must be taken. Upon any such view it must be recognized as not desirable that a utility should capitalize every expense incident to procuring new business or even such proportion of that expense as may be taken to represent the cost of procuring an increase of business. A few decades of such practice would result in a large volume of securities outstanding and representing no tangible property.

"Any business concern must make certain expenditures for the purpose of promoting a sale of its product or services. The necessity for this may be less in the case of a public utility business than in most others, but so far as the necessity for such expense exists the expense is just as truly incident to continued successful operation as the expense of good management or good methods of manufacture or of distribution. It should be recognized as an operating expense and paid from income rather than capitalized and made a constantly increasing burden upon the rate paying public. The utilities themselves have heretofore recognized this fact. This is the first case where we have found these costs charged to capital accounts."

In a system of classified accounts now in course of preparation by this Commission, and intended to be prescribed for the use of the various public utilities as early as the same shall be completed, are provisions requiring all expenses incident to securing new business to be charged, when incurred, to operating expenses. In this particular this Commission is following the precedents of all other like Commissions. We know of no Commission which in any classification of accounts permits these expenses to be charged to capital accounts.

The respondent has always treated its new business expense as an operating charge. And in their brief counsel for the respondent have included all expenses for new business as a part of the cost of service, which must be provided for out of rates before a return upon the value of the property is figured.

Now, this is all well if, having paid the principal expense at the time it is incurred, the rate paying public is thereafter exempt from having it added to the value of property upon which it must pay a return, but it is all wrong if the fourteenth amendment, enacted to protect life, liberty and property, operates to place upon the public the burden of paying such return even though it paid the original expense.

If the constitution requires that these expenses be added to the capital upon which the public must annually pay a return, regardless of the source from which they are paid in the first instance, then it is to be earnestly hoped that that fact may be authoritatively determined at some early date. In that event, the practice of the Commissions should be reversed, classifications of accounts should be rewritten, and expenses of securing new business, instead of being required to be charged to operating expenses, should be forbidden to be so charged, and required to be capitalized.

The amount of the item here claimed, and the insistence with which counsel have urged its allowance, and the importance of the principle involved, have led us to re-examine the decisions of courts and commissions upon the

question of "going value," with the purpose of determining to what extent, if at all, the contentions of counsel are supported by decided cases.

AUTHORITIES REVIEWED.

The leading case upon the question of "going value" is not a rate case, but a purchase case. Under the authority of a state statute, Kansas City, Missouri, had granted a twenty year franchise to the National Waterworks Company, which provided that if the franchise was not renewed upon the expiration, the city should be required to purchase the works at "the fair and equitable value of the whole works," to be fixed by the court, upon failure of the parties to agree thereon.

Upon expiration of the franchise the value was fixed by the court the case being reported as *National Waterworks Company v. Kansas City*, 62 Fed. 853 (decided July 2, 1894).

In the Circuit Court the case was referred to commissioners who reported a valuation of \$2,546,112. The Circuit Court increased this valuation to \$2,714,000. Both parties appealed from the Circuit Court, and the appeal was determined by the Circuit Court of Appeals in an opinion by Justice Brewer. The plaintiff had claimed a value equal to the annual net earnings capitalized at 6 per cent. The city had claimed a reproduction value less the depreciation. In considering these respective claims the court said:

"We are not satisfied that either method, by itself, will show * * 'the fair and equitable value.' Capitalization of the earnings will not, because that implies a continuance of earnings and a continuance of earnings rests upon a franchise to operate the waterworks. The original cost of the construction cannot control, for 'original cost' and 'present value' are not equivalent terms. Nor would the mere cost of reproducing the waterworks plant be a fair test, because that does not take into account the value which flows from the established connections between the pipes and the buildings of the city. * * The fact that the company does not own the connections between the pipes in the streets and the buildings—such connections being the property of the individual prop-

erty owners — does not militate against the proposition last stated, for who would care to buy, or at least give a large price for, a waterworks system without a single connection between the pipes in the streets and the buildings adjacent. Such a system would be a dead structure, rather than a living and going business. * * Such connections are not compulsory, but depend upon the will of the property owners, and are secured only by effort on the part of the owners of the waterworks, and inducements held out therefor. The city, by this purchase, steps into possession of a waterworks plant,— not merely a completed system for bringing water to the city, and distributing it through pipes placed in the streets, but a system already earning a large income by virtue of having secured connections between the pipes in the streets and a multitude of private buildings. It steps into possession of a property which not only has ability to earn, but is in fact earning. It should pay therefor not merely the value of the system which might be made to earn, but that of a system that does earn. Our effort has been to deduce from the volume of testimony that which, in this view of the situation, can be safely adjudged ‘the fair and equitable value.’ The original cost of the works is not accurately and satisfactorily shown. * * There is a large amount of testimony as to the probable cost of reproducing the system, to which strenuous objection is made on the ground of an alleged temporary and extreme depression in the cost of labor and material. * * We have the fact of liens placed upon the property, to the extent of \$3,000,000, with the qualified approval of the city officials. We have also the statement of the earnings, and the estimate of the value upon the basis of a capitalization of those earnings, amounting, as stated, at 6 per cent. to four and one-half millions. Rejecting the latter as too high, and the cost of reproduction as too low, and taking into consideration the entire history of the transactions between the company and the city from its commencement to the present time, we have sought to place a value upon the property as it stands, with all the connections already made between the pipes and the private and public buildings, and with the work which it is in fact doing of supplying all these buildings with water, and receiving pay therefor. That valuation, after much discussion, comparison of figures, and readjustments, we have all agreed, is three millions of dollars.”

Because this case is the foundation upon which the later “going value” decisions, relied on by the respondent, seem ultimately to rest, it should be noted carefully just what the situation was, and just what the court did. The task before the court was “to deduce from * * the testimony * * the fair and equitable value.” The evidence did not satisfactorily show the original cost. There was evidence of cost of reproduction and of the extent

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of depreciation—but the company objected to this on the ground of “temporary and extreme depression in the cost of labor and materials.”

The plaintiff's bill was filed December 26, 1891, and the cross bill of the city November 29, 1893. The court appointed commissioners who made a report upon which there was a hearing on March 22, 1894. It is a matter of history and common knowledge that the year 1893 was in fact the beginning of a period of extreme depression. The result was, as stated by one of the commissioners in an address before the American Society of Civil Engineers (see Whitten on *Valuation of Public Service Corporations*, Page 445), “as applied to the buildings, pipes and machinery, an account of which was no doubt much less than first cost.”

If the appraisal had not been made in panic times, when the reproduction cost was much less than the original cost, it may be doubted whether the court would have found it necessary to discuss “the value which flows from established connections” to justify, a value which it could safely adjudge “fair and equitable.” While the argument made in the opinion, to support the allowance of something for “established connections,” is that a water system with connections will sell for more than one without connections, it would seem that the real reason why the value was increased was because the court found that fixing value upon consideration of the cost of reproduction only gave a value “too low” to be “equitable.” The method by which it was determined what additions should be made on account of the established connections was not stated, nor, indeed, was any separate appraisal of that element of value attempted. The value of the entire plant was fixed as a lump sum “after taking into consideration the entire history of the transactions between the city and the company.”

The above case was decided July 2, 1894. In November 12 of the same year the U. S. Circuit Court in *Ames v. Union Pacific Railway Company*, 64 Fed. 165, enjoined

certain maximum freight rates fixed by a Nebraska statute, and the opinion was written by Justice Brewer. The court said:

"What is the test by which the reasonableness of rates is determined? This is not yet fully settled. Indeed, it is doubtful whether any single rule can be laid down, applicable to all cases. If it be said that the rates must be such as to secure to the owners a reasonable per cent. on the money invested, it will be remembered that many things have happened to make the investment far in excess of the actual value of the property,—injurious contracts, poor engineering, unusually high cost of material, rascality on the part of those engaged in the construction or management of the property. These and many other things, as is well known, are factors which have largely entered into the investments with which many railroad properties stand charged. * * In the cases before us, however, there is abundant testimony that the cost of reproducing these roads is less than the amount of the stock and bond account, or the cost of construction, and that the present value of the property is not accurately represented by either the stocks and bonds, or the original construction account. Nevertheless, the amount of money that has gone into the railroad property—the actual investment, as expressed, theoretically, at least, by the amount of stock and bonds—is not to be ignored, even though such sum is far in excess of the present value. * * It is not always reasonable to cast the entire burden of the depreciation on those who have invested their money in railroads. * * I think there is no hard and fast test which can be laid down to determine in all cases whether the rates prescribed by the legislature are just and reasonable, and that often many factors enter into the determination of the problem."

One searches in vain through this second opinion of Justice Brewer's for any recognition by him that his opinion in the *National Waterworks* case had established the law to be that the business which a public service property was doing must be valued and added to the sum of the values of physical properties. One does find, however, the idea that sacrifices made should not be ignored. The reason given for not accepting the rule "that the rates must * * secure * * a reasonable per cent. on the money invested," is that it would not be, in all cases, fair and equitable to the public, and not that it would not be fair to the investors. "No hard and fast test can be laid down," said the court. "Often many factors enter into the determination of the problem."

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In *San Diego Land and Town Company v. City of National City et al.*, 74 Fed. 79 (decided May 4, 1896), rates fixed by municipal ordinance were sought to be enjoined. It appeared that the work was constructed "during what is known in southern California as the boom of 1886-7, and at a time when materials and labor of all kinds were very high." The company claimed the right to earn on original cost. The court rejected the claim, saying that original cost was "but one element only," and that "the actual value of the property at the time the rates are to be fixed should form the basis upon which to compute just rates; having at the same time due regard to the right of the public, and to the cost of maintenance of the plant and its depreciation by reason of wear and tear." The court did not fix any value for the plant but merely found that the rates would "yield a fair interest on that portion of the value of the property properly referable to the territory embraced within National City." It would thus seem that the court considered original cost, reproduction cost, depreciation by wear and tear, and maintenance, with "due regard to the rights of the public."

In *San Diego Land and Town Company v. Jasper*, 110 Fed. 702 (decided August 10, 1901), rates fixed by the Board of Supervisors of San Diego County, California, were attacked on the ground that they were confiscatory. In considering the question of value the court said:

"The actual value of such property obviously depends upon a variety of considerations—among them the actual and prospective number of consumers. * * If the legislature had intended to make the cost of the plant the test of its value, it would have been the simplest sort of thing to have said so. * * It is said that the words 'present cost' (as used in the statute) indicate that it was intended by the legislature to make the cost of the entire plant the test of its value. But in view of other provisions of the act * * I think the court would not be justified in giving to the words 'present cost,' used in the clause quoted, that effect."

The court quoted from its former decision as to the proper basis for just rates, and affirmed its adherence to the views there expressed.

In *Cotting v. Kansas City Stock Yards Company*, 82 Fed. 850 (decided October 28, 1897), the court rejected the earning power under unregulated rates, and securities outstanding, as guides to value for rate purposes. The value found by the master was accepted, but the basis upon which the same was established does not appear. No reference is made in any of these three cases to an added value on account of established business, nor is the *National Waterworks* case even cited, though Justice Brewer's reason for not accepting original cost as a measure of present value, as stated in *Ames v. Railway*, was quoted in the first *San Diego Land and Town Company* case.

In *Newburyport Water Company v. Newburyport*, 168 Mass. 541 (decided June 14, 1897), the discovery appears first to have been made that the *National Waterworks* case was authority for the inclusion of a separately stated amount as representing what has since come to be known as "going value." The application of the authority of that case by the commissioners appears to have been extremely literal. Capitalization of net earnings have been rejected by Justice Brewer, as a method of fixing value, evidence of net earnings was excluded. "Something in excess of cost of reproduction" having been allowed by Justice Brewer because of the fact that the waterworks were "a system in operation," the commissioners found that "the plant was a going concern and * * had a greater value for the purposes of its use by the city by reason thereof * * fixed * * as * * \$40,000." The award of the commissioners was approved by the Massachusetts Supreme Court, the *National Waterworks* case being cited. The *Newburyport* case was followed in the *Gloucester Water Supply Company v. Gloucester*, 179 Mass. 365, the court still citing the *National Waterworks* case as its sole authority.

This was the state of the law when *Ames v. Union Pacific Railway* was decided by the United States Supreme Court (March 7, 1898), being reported as *Smyth v. Ames*, 169 U. S. 466. Justice Harlan, who wrote the opinion of the

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court, evidently realized that the case would become a leading case, and, while the decision of Justice Brewer was affirmed, the considerations which should enter into a valuation for rate purposes were restated with admirable clearness and with an evident intent to furnish a guide to be followed thereafter in like cases. The court said:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

This case was followed by the decision in *San Diego Land and Town Company v. City of National City*, 174 U. S. 739 (decided May 22, 1899), and *San Diego Land and Town Company v. Jasper*, 189 U. S. 439 (decided April 6, 1903), in each of which the decision of the Circuit Court, before referred to, was sustained. In no one of the three cases did the court indicate any consciousness of the fact that the true value of the property was its reconstruction cost plus an allowance for an intangible element of value arising out of the fact that the property appraised was doing the business it was designed to do. On the contrary the court clearly rejected all arbitrary rules of value in the first *San Diego Land and Town Company* case, where first cost, cost of reproduction, annual depreciation, and fair rate of return were sought to be made controlling factors. Justice Harlan said that "all these matters ought to be taken into consideration, and such weight * given them * * as under all the circumstances will be just to the company and to the public."

In the second case affecting the same company Justice Harlan said: "No doubt cost may be considered, and will have more or less importance according to the circumstances."

In *Kennebec Water District v. Waterville*, 97 Maine 185, (decided December 27, 1902), and in *Brunswick Water District v. Maine Water Company*, 99 Maine 371 (decided December 14, 1904), the Supreme Court of Maine laid down rules for the valuation of water properties taken by eminent domain. Both opinions were by Judge Savage. The instruction as to the treatment of the claim for an additional allowance on account of the fact that the plant was a going concern, contained in the first case, is not very clear, but in the second case the existence of "a going value * * separate and distinct from structure value" is explicitly denied, and the appraisal is confined to the physical structure concerning which the court said:

"As a structure it has value, independent of any use, or right to use, where it is,—a value probably much less than its cost, unless it can be used where it is. * * * We speak sometimes of a going concern value as if it is, or could be separate and distinct from structural value,—so much for structure and so much for going concern. But this is not an accurate statement. The going concern part of it has no existence except as a characteristic of the structure. If no structure, no going concern. If a structure in use, it is a structure whose value is affected by the fact that it is in use. There is only one value. It is the value of the structure as being used. That is all there is of it."

In *Bristol v. Bristol Waterworks*, 23 R. I. 274 (decided July 27, 1901), the master reported a valuation of the physical properties, of the franchise, of the "good will," and of the "enhanced value due to the fact that the plant is a running plant." The court disallowed the last two items, saying that they were for "elements * included in the valuation of the franchise."

In *Norwich Gas and Electric Company v. Norwich*, 76 Conn. 565 (decided April 14, 1904), under a statute which provided that the price to be paid should be the "fair market value * * including as an element of value the earning capacity based upon the actual earnings" at the

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time of the taking, the commissioners appointed by the court to appraise the plant reported the value to be \$590,000, and that "in reaching said valuation the commissioners * considered the condition of the plant * * the structure value * * present condition * * the changes needed * * the expense of operation * * that the plants are going concerns * * earning capacity * * actual earnings, etc." The defendant requested the commissioners to state specifically "what value they placed upon * * each element of value which they included in the purchase price." This request was denied, and the court held properly denied, saying: "It is enough to say that the valuation of anything in the nature of a connected and working whole must be made and regarded as an entirety."

The consideration of "earning capacity as a going concern" in this case was clearly required by the statute and the court so pointed out. It cited, however, the *National Waterworks Company* and the *Gloucester Water Supply Company* cases.

In *Galena Water Company v. Galena*, 74 Kansas 624 (decided November 10, 1906), the city had granted a franchise, reserving the right to purchase at the "fair and equitable value * * of the works * * including the franchise." Upon exercising its option, the value was fixed by a referee, who allowed a separate item for "going value including the franchise." This item was disallowed by the District Court, but was allowed by the Kansas Supreme Court, upon the authority of the *National Waterworks Company* and the *Bristol Waterworks Company* cases.

In re *Monongahela Water Company*, 233 Pa. St. 323, (decided January 4, 1909), no separate appraisal was made of any "going concern" element of value. The appraisers valued "the physical property as a going concern" and the court upheld their valuation.

In *Omaha v. Omaha Water Company*, 218 U. S. 180, (decided May 31, 1910), the United States Supreme Court, in an opinion by Justice Lurton, upheld an appraisal where

a separate allowance for "going value" had been made. In that case the court said that the value was not limited "to the bare bones of the plant, its physical properties," saying:

"That there is a difference between even the cost of duplication, less depreciation, * * and the commercial value of the business as a going concern, is evident. Such an allowance was upheld in *National Waterworks Company v. Kansas City*. * * No such question was considered in either *Knoxville v. Knoxville Water Company*[†] * * or in *Willcox v. Consolidated Gas Company*[‡] (both considered *post*). Both cases were rate cases, and did not concern the ascertainment of value under contracts of sale."

There was no discussion of going value in this case in the court below, 162 Fed. 232.

In *Metropolitan Trust Company v. Houston, etc., Railroad*, 90 Fed. 683 (decided December 1, 1898), the court rejected the valuation made by the Texas Railroad Commission, saying that it seemed to be clear that in fixing the value "no allowance was made for favorable location * * advance in prosperity of the country through which (the road) runs, settling, seasoning * * established business * * good will * * all of which ought reasonably to be considered." While elements are included here which have since been expressly disallowed by the United States Supreme Court, some of the matters suggested were clearly proper for consideration "among other things." Sacrifices made were evidently what the court had in mind, as indicated by the following language: "The Commission * * say they included interest on the money invested during the period of construction. * * This * * would not cover all of the time * in which the railroad company and its predecessors have lost interest on the investment."

In *Matthews v. Board of Corporation Commissioners*, 106 Fed. 7 (decided February 5, 1901), no element of going value was mentioned. Deficits in the "bad years from 1891 to 1895" were disregarded, and the value was placed at less than cost.

[†] 212 U. S. 1.—Ed.

[‡] 212 U. S. 19.—Ed.

In *Missouri, etc., Railway v. Love*, 177 Fed. 493 (decided February 14, 1910), the court said:

"An established railroad system may be worth more than its original cost and more than the mere cost of its physical reproduction. It has passed the initial period of little or no return to its owners which, of greater or less duration, almost always follows construction and is not infrequently marked by default and bankruptcy. * * It has attained a position after many experiences common to railroad enterprises which entail loss and cost not paid from current earnings, and which correspondingly make for value."

Since the decision of *Smyth v. Ames*, public utility properties (as distinguished from railways) have been often valued by state Commissions for rate purposes, and the claim of "going value" has been much considered. Appeals from the Commissions, and some few cases arising out of the making of rates by legislative bodies, have brought the question of value for rate purposes before many state and federal courts. A review of these decisions will be helpful.

In the *Berlin Electric Light Company case*,* 3 N. H. P. S. C. R. 174, we made some review of the Wisconsin Commission decisions, showing that the Wisconsin Commission clearly recognizes that allowance should be made for the "going concern element," but that such allowances should be based upon the early losses actually sustained in placing the property upon a paying basis. In addition to the cases there cited, the following well illustrate the Wisconsin theory that "going value" depends on sacrifices made, and that when the business has been built up out of earnings, in addition to paying a fair return to stockholders, there is no "going value." *State Journal Printing Company v. Madison Gas and Electric Company*, 4 W. R. C. R. 501, 577; *Payne v. Wisconsin Telephone Company*,† 4 W. R. C. R. 1, 62; *Racine v. Racine Gas Light Company*, 6 W. R. C. R. 228, 286.

The Commission does not accept the early losses as having a fixed and certain value equal to the total amount of

* Printed in Commission Leaflet No. 21, at page 781.—Ed.

† I Commission Telephone Cases 329.—Ed.

the same plus accrued interest, but considers such information concerning the same as may be available, and gives such weight thereto as it thinks just in fixing the total value of the entire property. *Janesville v. Janesville Water Company*, 7 W. R. C. R. 628, 642; *Application Oconto Water Company*, 7 W. R. C. R. 497, 515; *In re Kaukauna Light and Power Company*, 6 W. R. C. R. 97.

In this proceeding, the Commission has been sustained by the Supreme Court of the State. See *Appleton Water Works v. Railroad Commission*, 142 N. W. 476 (decided May 31, 1913).

In *Mayhew v. Kings County Lighting Company*, 2 N. Y. P. S. C. R. (First District) 659, 695, the New York Public Service Commission for the First District refused to make any allowance for "going value" beyond what was included in the appraisal of the physical properties, which were "not valued as a defunct or static concern," the Commission saying that "Whatever allowance should be made * * beyond what has already been considered, should be made in determining the fair rate of return."

In *Fuhrmann v. Cataract Power and Conduit Company*,* 3 N. Y. P. S. C. R. (Second District) 690 (decided April 2, 1913), the New York Public Service Commission for the Second District, in a very able report by Chairman Stevens, held that when the costs of building up the business have been paid from operating expense "no just reason exists for claiming that any portion of these * * constitute a sum upon which the public must pay returns. It has been already paid from the moment they have been charged to operating expenses." But the Commission did hold that operating deficits were "a circumstance which may justify a higher rate when the business does become remunerative."

Upon *certiorari* proceedings in *Mayhew v. Kings County Lighting Company*, reported as *People ex rel. Kings County Lighting Company v. Willcox et al.*, 141 N. Y. Supplemental 677 (decided May 9, 1913), the appellate division of the N. Y. Supreme Court reversed the Commission.

* Printed in Commission Leaflet No. 18, at page 1015. — Ed.

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In the Court of Appeals (in an opinion handed down March 24, 1914) the Supreme Court was sustained as to the allowance for "going value," and the court intimated that "going value" should be appraised as a separate item. The court, however, distinctly made deficiency in earnings during the development period the basis for the allowance of such item, apparently adopting and following the so-called Wisconsin rule. Upon this point the court said:

"If • a public service corporation has received more or less than a fair return, it has received more or less, as the case may be, than was its due, irrespective of whether a rate had been fixed by public authority. If a deficiency in the fair return in the early years was due to losses or expenditures which were reasonably necessary and proper in developing efficiency and economy of operation and in establishing a business, it should be made up by the returns in later years. If there was a fair return from the start, the corporation has received all it was entitled to, irrespective of how much of the earnings may have been diverted to the building up of the business. • • •

"The first question, therefore, to determine on this branch of the case was whether the company had already received a fair return as its investment. If it has received such return from the start, or if in later years it had received more than a fair return, the public would already have borne the expense of establishing the business in whole or in part and to that extent the question of "going value" for the purpose of fixing a present rate would be eliminated. For it must be constantly kept in mind in dealing with this problem that the company is entitled to a fair return and no more. If it has already had it, that is the end of the matter. If it did not receive a fair return in the early years owing to the establishment of the business, a subsequent rate must allow for that loss or it will be confiscatory."

In *City of Palo Alto v. Palo Alto Gas Company*,* 2 Cal. R. C. R. 300, 310 (decided March 12, 1913), the California Commission, after quoting from the discussion of going value by the Wisconsin Commission in the *State Journal Printing Company* case, says:

"That there are certain actual costs incurred in developing the business during its early stage, for which cost the utility is entitled to be reimbursed, just as clearly as it is entitled to a return on the physical portions of its plant, seems to be too obvious for argument. The investor

* Printed in Commission Leaflet No. 18, at page 966.—Ed.

must go into his pocket to meet one kind of cost as clearly as the other.

* * I am of the opinion that such costs, legitimately and wisely incurred, should be taken care of in some way, but the exact method to be pursued (whether by increasing value or rate of return), and the extent to which consideration should be given to such items, will depend upon the facts of each particular case."

No separate going concern value was fixed in this case, but the Commission stated that it considered the going concern value element in fixing the total value of the entire property.

In the following cases before the California Commission, it was held that upon the evidence no "going value" could be allowed. *Application Antelope Creek and Red Bluff Water Company*, 2 W. R. C. R. 18; *Application Cuyamaca Water Company*,* 2 Cal. R. C. R. 514; *Application San Bernardino Gas case*, 2 Cal. R. C. R. 731; *Application Jackson Water and Power Company*, 2 Cal. R. C. R. 1008.

In *Westenhaver v. Pioneer Telephone and Telegraph Company*,† 1 Okla. Corporation Commission Reports 158 (decided May 12, 1908), the Oklahoma Commission reduced the rates of the respondent corporation. The report contained no discussion of going value, but from statements contained in the Supreme Court opinion upon that case it appears that no allowance for "going value" was made. Under the peculiar provisions of the Oklahoma constitution appeals may be taken to the Supreme Court, and if error is found, the court itself may determine and make the order which it finds the Commission ought to have made. Such an appeal was taken in the case just mentioned, and it is reported as *Pioneer Telephone and Telegraph Company v. Westenhaver*,‡ 29 Okla. 429 (decided January 10, 1911). The court quotes with approval from the report of the Wisconsin Commission in *Hill v. Antigo Water Company*,§ and says:

"During the time of development, there is a loss of money actually expended and of dividends upon the property invested. How shall this

* Printed in Commission Leaflet No. 27, at page 284.—Ed.

† III Commission Telephone Cases 1666.—Ed.

‡ III Commission Telephone Cases 1689.—Ed.

§ 3 W. R. C. R. 623.—Ed.

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be taken care of? * * * The public cannot expect as a business proposition, or demand as a legal right, that this loss shall be borne by him who furnishes the service; for investors in public service property make such investments for the return they will yield; and, if the law required that a portion of the investments shall never yield any return, but shall be a total loss to the investor, capital would unwillingly be placed into such class of investments; but the law, in our opinion, does not so require. Private property can no more be taken in this method for public use without compensation than by any other method. When the use of the property and the expenditures made during the non-expense paying and non-dividend paying period of the plant are treated as an element of the value of the property upon which fair returns shall be allowed, then the burden is distributed among those who receive the benefits of the expenditures, and the use of the property in its enhanced value."

In *Bolen v. Pioneer Telephone and Telegraph Company** (decided December 4, 1913), before the Oklahoma Commission, no allowance for going value was included, there being, the Commission held, no evidence upon which such allowance could be made. It said:

"If there is any such an element of value in the plant in question, it would appear that the burden would rest on the defendant corporation to show the amount thereof, if the same is to be accepted as a legitimate fact in the valuation of investments upon which the defendant corporation is entitled to earn."

In *Spring Valley Water Company v. San Francisco*, 165 Fed. 667 (decided October 7, 1908), the court discussed the value of complainant's property in part as follows:

"The owner of private property sets the price at which others may buy or use it; he cannot be compelled to accept less; this is his right of contract; but when he devotes his property to public use, he must submit to the right of the public to regulate his compensation for such use down to what is just both to himself and to the public, and that compensation is to be based, not on the cost of the next available substitute, but on a fair, reasonable value of the property at the time it is used for public convenience. While the cost of a substitute system may be considered in finding the reasonable value of the Spring Valley plant, it cannot be a controlling element. * * Serious and perplexing questions arise

* Printed in Commission Leaflet No. 27, at page 111.—Ed.

when it is attempted to ascertain the value of the franchise and going business. Here very little has been settled by the courts, except that each case must depend on its own special circumstances. * * The water company's system, in so far as it is now in service, and possibly in so far as it will be presently serviceable, is to be treated as a unit. It probably has a value as a whole which exceeds the sum of the values of its several physical elements and characteristics. That value is affected by the franchise, by the fact that the concern is a going business. The plant operated under a franchise, a legal right to collect water rates, is more valuable than without such a right; and a plant with an established business, with customers who have connected their houses with the company's distributing pipes, is more valuable than it would be without such connections and without such customers. These facts, as well as all other discoverable elements of value, should be weighed, but it must be remembered that while the rate fixing agency is in duty bound to establish rates which will afford a reasonable compensation for the use of this plant at a fair valuation as affected by the fact that it is a going business and operated under its franchise, there is no duty to go beyond this and confer an additional value for these intangible elements, which is neither discoverable nor apparent."

The same court in a later case between the same parties, *Spring Valley Water Works Company v. San Francisco*, 192 Fed. 137, said:

"It is impossible to consider the constant use of the word 'fair' or the word 'reasonable' in connection with value, by all the federal courts and the courts of this State in practically every recent statement of this rule, without feeling that regard must be given to the service performed by the property; that reasonable value and fair value are not always and under all conditions the precise equivalent of full actual value, or the value which would be awarded in condemnation proceedings; that the value upon which a fair return is due is the value which under all the circumstances is reasonable and fair as between the public and the person who has voluntarily devoted his property, or some portion or use thereof, to public convenience, * * * The fact that complainant's plant is in actual operation, in other words, that it is a going business, is an element of value."

And then after reviewing the testimony of the experts upon this point:

"Probably nothing further is needed to demonstrate, for this case at least, the utter futility of attempting to establish a separate and distinct valuation for going business. The burden was on complainant, if

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it wished such an independent valuation, to produce the evidence on which it could be based; but no such evidence has been called to my attention. * * I shall consider the fact that complainant has an established business, not by fixing a definite value therefor, but along the lines suggested by the sound and practical utterances of Judge Savage in *Brunswick Water District v. Maine Water Company*, 99 Me. 371. * * The good will of complainant will not be considered as a proper element for valuation in this proceeding."

In *Contra Costa Water Company v. Oakland*, 159 Cal. 323 (decided January 19, 1911), the court held that upon the evidence in that case no "going value" could be allowed, and added:

"In what we have said we do not desire to be understood as deciding that in the matter of fixing water rates anything at all should be added to the value on account of the element of 'going concern.'"

In *C. H. Venner and Company v. Urbana Water Works*, 174 Fed. 328, 352 (decided November 6, 1909), the court allowed an item for going value without discussion, and upon the citation of no authority except the *National Waterworks Company* case.

In *Cedar Rapids Water Company v. City of Cedar Rapids*, 110 Iowa 234 (decided October 27, 1902), "going value," meaning "that value which arises from having an established 'going' business," was distinctly disallowed.

In *Lincoln Gas and Electric Light Company v. Lincoln*, 182 Fed. 926 (decided April 6, 1909), no allowance for going value was included, but the value was taken as the cost of reproduction, less depreciation, with an allowance for working capital added. This case was taken to the United States Supreme Court. See *Lincoln Gas and Electric Light Company v. Lincoln*, 223 U. S. 329 (decided February 19, 1912). From the opinion there it appears that \$100,000 was claimed for "promotion of business, or going value and franchise." The case was remanded for findings of fact by a master, but while directions as to particular matters to be found are contained in the opinion, there is no discussion of the going value claim, nor any direction that any finding be made with reference thereto.

In *Cedar Rapids Gas Light Company v. Cedar Rapids*, 144 Iowa 426 (decided May 4, 1909), the court said:

"The value of the plant is to be estimated in its entirety rather than by the addition of estimates on its component parts, though the latter course will materially aid in determining the value. * * The fact that the plant is in successful operation constitutes an element of value. As said, the value of the system as completed, earning a present income, is the criterion. * * Save as above indicated, the element of value designated a 'going concern' is but another name for 'good will,' which is not to be taken into account in a case like this, where the company is granted a monopoly."

Upon writ of error to the United States Supreme Court in this case, the Iowa court was sustained. *Cedar Rapids Gas Light Company v. Cedar Rapids*, 223 U. S. 655 (decided March 11, 1912). This case was followed also in *Des Moines Gas Company v. Des Moines*, 199 Fed. 204 (decided August 21, 1912). Also *Cumberland Telephone and Telegraph Company v. Louisville*, 187 Fed. 637 (decided April 25, 1911).

In *Consolidated Gas Company v. New York*, 157 Fed. 849 (decided December 20, 1907), the master, citing the *National City Waterworks* case, had said:

"It (good will) is not necessarily the ordinary commercial good will. * * The modern decisions have recognized its proper scope as including that species of intangible value which comes from the building up of a complete organization in the successful operation of a going concern. * * As I do not feel it practicable to differentiate in figures the value of * * franchises and good will, I have concluded to consider all of the intangible assets together * * at the sum of \$20,000,000."

The court said:

"I cannot perceive how this complainant can possess a good will. * * There is nothing in the nature of its business enabling it to acquire good will in the property sense or indeed in any other. It is required by law to furnish gas * * and it owns the mains, service pipes, and materials. * * What induces a customer to remain with this company, its successor or vendee? Nothing that I can imagine, except a desire to avoid the nuisance of street digging in front of his house. * * Yet even this nuisance is in all human probability impossible of occurrence because of the beneficially monopolistic character of defendant's present occupancy of the streets of the city. * * I

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think it apparent that the conceivable good will of a gas company in this city about equal to that of the street cleaning department of the municipal government."

The item of \$20,000,000 allowed by the master for "franchises and good will" was reduced to \$12,000,000, allowed as the value of the franchises, the court holding itself bound to allow a value for those.

This case came to the United States Supreme Court, where it was reported as *Willcox v. Consolidated Gas Company*, 212 U. S. 19 (decided January 4, 1909). That court held the allowance for "good will" properly denied, and also decreased the allowance for franchises to \$7,781,000, being a value fixed by a legislative committee in 1884, when several companies were consolidated under a legislative act. It is clear that any allowance which the master made for going value was wholly excluded.

In *Knoxville v. Knoxville Water Company*, 212 U. S. 1, decided the same day as the *Consolidated Gas Company* case, the United States Supreme Court expressly withheld its approval of the allowance of an item for "going value," saying: "We express no opinion as to the propriety (of this item) in the valuation * * but leave that question to be considered when it necessarily arises."

In *Municipal League of Phoenix v. Pacific Gas and Electric Company** (decided June 23, 1913), before the Arizona Commission, a going value item of \$159,000, based upon alleged early losses, was claimed by the respondent. The Commission held that no going value should be included. Going value was also disallowed by the same Commission in *Huffman v. Tucson Gas and Electric Light and Power Company*† (decided July 9, 1913).

The United States District Court in the *Pacific Gas and Electric Company* case granted a temporary injunction against the enforcement of the rates fixed by the Commis-

* Printed in Commission Leaflet No. 21, at page 699.—Ed.

† Printed in Commission Leaflet No. 21, at page 725.—Ed.

sion, saying that established business should be considered in determining value.

The Georgia Railroad Commission in a very well considered opinion in a rate case (*Application Macon Railway and Light Company*,* decided February 24, 1914, and reported in the March issue of *Public Service Regulation*) discussed going value as follows:

"As we understand the term it means a value due to the fact that a plant has consumers actually using its product; that it is in actual and successful operation, and has attached to it a developed business.

"As we understand the claim in this case is, that to actual physical values there should be added a sum representing the value of this business and the expense incurred in attaching it. In a rate consideration we distinguish between the value of the attached business, as a property addition, and the actual cash outlay made in attaching the business. The Commission will not allow as added property upon which returns should be perpetually paid by the public, the value of the established business.

"We do not mean to say that we have in reaching conclusions as to values hereinafter stated, treated certain physical properties as individual, disconnected units. We have considered them as integral and essential parts of a completed, perfected plant, capable of and ready to serve. In these values we have included overhead charges, such as organization, engineering, contractors' profits, reasonable promotion expenses, legal expenses, interest during construction, insurance, etc.

"In so far as 'going value' includes such elements as actual expense of attaching business we believe that it should be recognized in the earlier or beginning rates of a public service corporation and for a sufficient period to reimburse the company for such reasonable expenditures. This is done when such expenses are carried as they should be and are in operating expenses. But to allow them in 'operating expenses,' and at the same time add fixed values to physical property values and tax the public perpetually to afford a return thereon, is contrary to our convictions of right."

An allowance for going value was made without discussion in *Complaint of Parsons Railway and Light Company*, 1 Kan. Public Utilities Com. Rep. 97 (decided November 8, 1912), and in *Valuation of The Pacific Telephone and Tele-*

* Printed in Commission Leaflet No. 29, at page 1072.— Ed.

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graph Company,* Washington Public Service Commission (decided November 1, 1913).

It was disallowed in the following cases:

Ely v. Ely Light and Power Company,† Nevada Public Service Commission (decided June 7, 1913).

Application New Midland Power and Traction Company,‡ Ohio Public Utilities Commission (decided February 2, 1914).

Application Lincoln Telephone and Telegraph Company,§ Nebraska Railway Commission (decided October 18, 1913).

Application Union City v. Union Light and Power Company, Indiana Public Service Commission (decided February 7, 1914).

In re *Addison and Panton Telephone and Telegraph Company et al.*,|| Vermont Public Service Commission (decided March 14, 1914).

Haverhill Gas case,¶ Massachusetts Gas and Electric Light Commission Report, 1912, Page 50 (decided December 31, 1912).

In the *Public Service Gas Company case*,° commonly called the *Passaic case*, 1 N. J. Public Utility Commissioners Rep. 433, 468 (decided December 26, 1912), the New Jersey Commission allowed 30 per cent. of the structural value new of the plant and distribution system as "going value." This amount the Commission held should be included in the base value upon which the utility should be allowed to earn a return, even though the cost involved in developing the business was in fact met out of rates exacted from consumers.

* Commission Leaflet No. 25, page 892.—ED.

† Commission Leaflet No. 24, page 578.—ED.

‡ Commission Leaflet No. 27, page 361.—ED.

§ Commission Leaflet No. 24, page 421.—ED.

|| Commission Leaflet No. 29, page 954.—ED.

¶ Commission Leaflet No. 15, page 324.—ED.

° Commission Leaflet No. 15, page 354.—ED.

This case was taken to the New Jersey Supreme Court, where it was reported as *Public Service Gas Company v. Board of Utility Commissioners*. See opinion printed in 1 N. J. Public Utility Commissioners Rep. 504. Upon this point the court said :

"The controversy turns mainly on the allowance for going value and the refusal to allow anything for the value of the franchise. For going value or cost of developing the business, \$1,025,000 was allowed. The cities claim that no allowance at all should be made and their writ was prosecuted to secure the correction of this alleged error. For reasons already stated we cannot in these proceedings lower the rate fixed by the Commissioners, and it would be useless therefore to reject this item of the valuation as counsel for the cities ask. The company insists that there should be allowed about twice as much, including preliminary expenses and cost of development. It is necessary, therefore, to determine first whether any allowance at all for going value is proper. We think both on weight of authority and on reason there should be such an allowance. *National Waterworks Company v. Kansas City*, 62 Fed. Rep. 853. *Kennebec Water District v. Waterville*, 97 Maine 185; 54 Atl. 6. *Gloucester Water Supply Company v. Gloucester*, 179 Mass. 365, 60 N. E. 977. *Town of Bristol v. Bristol and Warren Waterworks*, 23 R. I. 274; 49 Atl. 974. *Norwich Gas and Electric Company v. City of Norwich*, 76 Conn. 565; 57 Atl. 746. *Omaha v. Omaha Waterworks Company*, 218 U. S. 180. The cost of a gas plant includes not merely the loss of interest while the plant is in course of construction and is building up a paying business, but even in the case of an old established plant, for the manufacture and distribution of a commodity to the use of which the public has become so accustomed that it seems a necessity, there must be loss while pipe lines are extended to await the coming of consumers as the city extends. There is the cost of securing and retaining customers, of encouraging the greater use of gas for fuel and for light by the introduction of new and improved appliances, the necessary loss attending experiments that promise improvement, the obsolescence of plant apart from that ordinary calculable depreciation which may be charged to current expenses instead of being capitalized, the expense that must attend and the additional value that arises from the uniting of separate concerns and the organization of a great industry with a view to economical production, and the cost of procuring capital for the original work or subsequent extensions. What items should be charged to construction; what to business development; how much to current expenses, and how much to permanent investment of capital, are all most important practical business questions. However these questions may be solved, all these expenses must be met. Whether they shall be met at the expense of present consumers, by being charged at once to current expenses, thus

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reducing the net returns and making necessary a higher rate, or whether they shall be capitalized in whole or in part and constitute a permanent addition to capital, or be capitalized and gradually amortized, are business questions. The legal question is whether these items constitute a going value upon which the company is entitled to a return if the individual rate is to be just and reasonable. To this we answer yes."

From the foregoing cases, the *Norwich Gas and Electric Company* case and the *Newburyport, Gloucester, Galena, Urbana and Omaha Water Company* cases seem to fall into a class by themselves. In each of them a separate item was allowed or approved for the "going concern" element, the court using language which would seem to indicate that it was allowed on account of the greater earning capacity of the property arising from the attached business, and the enhanced commercial value resulting therefrom. But all these cases are based upon the authority of the *National Waterworks* case. A little later we will again refer to that case, and endeavor to determine whether, properly applied, it goes the length of supporting these cases. In passing, however, we may note that all of the cases are condemnation cases, not rate cases; that the *Norwich Gas and Electric Company* case and the *Galena Water Company* case arose under statutes which required consideration of the earning capacity or of the franchise; and that in the *Omaha Water Company* case the court distinguished between a condemnation case and a rate case, implying that "going value" was not to be considered in fixing value for rate purposes.

Except the *Passaic* case, which we will specifically refer to later, all of the other cases, where allowance has been made on account of the so-called "going concern" element, appear to be consistent. Considerable variety of language is used, but a close examination of each case will disclose that in discussing intangible characteristics of the property appraised (when any discussion is made), the court, or other tribunal, has had in mind the necessity of making allowance in addition to the value of the bare physical properties in order to preserve to the utility owners the benefit

of sacrifices made by them, either in actual advancements, or in dividends foregone, during the development period of the property.

It has been noted that in the *National Waterworks* case the appraisal of the physical properties, made during the panic period of 1893, was much less than the original cost. The court then discussed the well established business of the company, referred to the earning capacity shown, the bonded indebtedness, and other evidence, and said that "taking into consideration the entire history of the transactions between the company and the city, from its commencement to the present time" it had sought to place "a fair and equitable value" upon the property as it stood, actually supplying water to its customers and receiving pay therefor. Rightly considered, therefore, it would seem that this case is authority not for the appraisal of attached business as a separate item, but rather to the effect that neither reproduction cost nor earnings capitalized can be taken as the absolute measure of fair value, but that the amount which has been spent upon the property, its bonded indebtedness, the earning capacity, which it has acquired by reason of business attached, and the entire history of the property, ought to be considered, and a value fixed which, under all the circumstances, is just.

We have also seen that in deciding *Ames v. Union Pacific*, only four months after writing the opinion in the *National Waterworks* case, Justice Brewer said nothing about valuing established business, and adding that to the value of physical properties. But he did say that original cost, while not a conclusive measure of value, could not be ignored; that reproduction cost could not be taken as the absolute measure of present value, because it was "not always reasonable to cast the entire burden of the depreciation on those who have invested their money in railroads."

And when the *Ames* case came to the Supreme Court, it is obvious that the court simply consolidated and stated in somewhat broader form the classes of evidence which had been considered by Justice Brewer in the two cases which

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we have just discussed. The rule which we have quoted from *Smyth v. Ames* was the result, in which it was said that the evidence to be considered was, (1) original cost (including whatever amount spent in permanent improvements); (2) amount and market value of bonds and stocks (in the *National Waterworks* case Justice Brewer had considered bonds, and in the *Ames* case bonds and stock); (3) present cost of construction; (4) earning capacity under prescribed rates (in the *National Waterworks* case Justice Brewer had given weight to the capacity to earn arising from established connections); (5) operating expenses; and (6) perhaps other matters. And it was stated that each class of evidence was to receive such weight as should be just and right in each case. Now, while the rule as laid down in *Smyth v. Ames* requires the consideration of the earning capacity which any such utility plant has by reason of its established business, it leaves the weight to be given thereto to be determined by considerations of justice, under all the circumstances of the particular case. Accordingly, the rule has been very discriminatingly applied when it has been made the basis for allowing a proper addition to physical values to offset reasonable losses to stockholders during the development period. But it would be following only half the rule, and would work injustice quite as often as it would promote justice, to give to attached business a fixed and certain value in all cases, making no attempt to vary its weight according to the facts of the particular case.

Upon full consideration of the principle involved, and upon a careful study of all the cases where that principle has been applied, we hold that in every valuation case consideration must be given to the amount of business being done and the earnings therefrom at reasonable rates, as well as to physical properties; and that the plant must be valued, not as a collection of dead units, but as a going concern, doing the business which in the particular case it appears that it does. But for the purpose of determining what weight should justly be given to the business being done, we hold that regard may be had to the expense at

which the same was built up, and to the source from which such expense was paid.

This view, we think, is supported by the authorities cited, with the exceptions stated. The *Passaic* case stands alone in holding that the same weight must be given to attached business when built up at the expense of rate payers, as when representing sacrifices made by stockholders. And it should be noted that the court opinion in that case seems not to accord with the expressions of the Commission, but to imply clearly that if charged at once to operating expenses, and paid by consumers, the cost incident to building up business should not be treated as a permanent addition to capital.

The basis upon which going value was allowed in the Kansas and Washington Commission cases is not disclosed. All of the other cases either deny any going value, or in effect hold that the going concern element finds its principal weight in such unrequited sacrifices of stockholders as the existing business may fairly be taken to represent.

In the *Berlin Electric Light Company* case we held that, "If especial weight is to be claimed for the going concern element on account of alleged failure of returns in earlier years evidence should be introduced so that an intelligent finding upon that point may be made."

This case well illustrates the importance of requiring any such claim to be based on evidence of facts rather than upon opinion evidence. The opinion evidence here, advanced upon the reproductive theory, if accepted and considered alone, would support a claim of \$204,000 for early losses which, investigation proves, never had any existence except in the imagination of the witness, and \$36,000 more for early expenditures of the same character.

If the mere expression of an opinion by a witness that it cost such an amount to secure a customer or such an amount to build up a business, were to be held to constitute proof of value to that extent, then the less complete the financial records of utilities the more valuable are their properties in most cases.

It would seem more reasonable that a utility which has sustained losses, and knows the facts, should prove such losses, and show why they should be considered as enhancing value, than that losses should be assumed in all cases unless actually disproved by the representatives of the public, who do not have knowledge of the facts, and who will often be unable to obtain proof thereof.

In this connection, as bearing upon the importance of the adoption of a proper practice with reference to "going value" evidence, we quote from a recent address by Professor John H. Gray, president of the American Economic Association, delivered before the association.

"The moment courts and commissions lend an ear to testimony on the cost of reproduction, they are not only trying to decide an important question on opinion testimony, and have not only deserted the realm of fact for the regions of fancy, but they are confronted by one of the most appalling dangers of the unequal distribution of wealth that can be imagined. For, with our weak governments and commercialized society, the combined wealth does in fact hire, and will continue to hire, until the balance of our civilization is shifted, all the men of largest intellect and experience as expert witnesses. The result is that these men whose professional and financial future depends on the favorable opinion of the companies, and with no possibility of indictment for perjury on mere opinion testimony, and, further, with no practical danger of suffering in public esteem when their testimony is in fact false, place no limit on their fancies or estimates of value."

That Professor Gray's fears with reference to the dangers incident to enlarging the field within which we shall be dependent on expert testimony are not entirely fanciful, would seem to be indicated by the following remarks of Judge McPherson, quoted from the opinion in the *Des Moines Gas* case.

"This litigation has cost both the gas company and city extravagantly large sums, most of which cannot be taxed as costs, nor recovered back by the party successful in the end. * * * Too often we have selfish, partisan, prejudiced, and unreliable experts engaged for weeks at a time, at \$100 or more and expenses per day, exaggerating their importance, and making the successful party in fact a loser."

It is quite needless to say that these quotations are not intended as having the slightest reference to the experts who testified here. We have merely desired in this case, where the facts are known, to call attention to a very real danger always involved in any departure from the firm foundation of proved facts in making allowance for early losses, claimed as constituting an element of value. Any allowance for such claimed losses, when the same are not proved except by opinion evidence, is quite as likely to be unjust to the public as it is to be required by the actual facts in justice to the utility.

We also adhere to our opinion expressed in the *Berlin Electric Light Company* case, that the property should be valued as an entirety. It is impossible properly to estimate the value of the going concern element separately from the physical property of which it is an inherent part. As dead units, the physical property of most utilities would be of little value; and that is true in this case.

LAND.

In Mr. McClellan's inventory land is carried at \$162,500. He testified that he knew nothing about the value; that the amount included was handed to him as the result of a local appraisal. To the amount of such appraisal he added, as we have seen, \$4,063 as "contingent fee on land," and \$9,750 as interest during construction. His reason for making these additions he stated as follows:

"When a man appraises land, he says that piece of land is worth so much, and he means that the buyer will give that much for it; and in addition to that there are usually contingent fees which must be added in the acquiring of it, the filing of certain papers, agent's commission, and other expenses; and then the interest during construction is due to the fact that the land must be bought before the period of construction."

The respondent produced three witnesses, residents of Manchester, and familiar with real estate values there, who gave their opinion as to the value of the several tracts of land involved, except as to the small strip on Amory Street, which is included in the tables below at the price for which it was purchased. The Amory Street land was ac-

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quired for the purpose of laying a main through the same, and is still used. It will be allowed for without further particular mention.

The respondent's land value experts were in substantial accord in their testimony. Hon. Charles C. Hayes, mayor of Manchester, who has been in the real estate business for many years, estimated the value of the several tracts as follows:

LAND OF MANCHESTER AND PEOPLE'S COMPANIES.

HAYES' APPRAISAL.			
	Area in feet	Value per foot	Total value
Dean Street tract.....	33,000	30 to 40 cents	\$9,900 to \$13,200
Two cottage lots.....	30,748	6 to 7 cents	1,845 to 2,152
Reservoir tract.....	87,120	6 to 7 cents	5,227 to 6,098
Nutt Road tract.....	30,499	22 to 30 cents	6,710 to 9,150
Gas works tract.....	292,622	40 to 50 cents	117,048 to 146,311
Amory Street strip *	200	25 cents	50 to 50
ALL TRACTS.....			<u>\$140,780 to \$178,961</u>

The values testified to, the witnesses said, were the amounts which they believed the land could be sold for, if free from buildings, the expense of sale, commissions, etc., being paid by the owner.

While it would probably not be possible to make a quick sale of these tracts for the prices named, we are satisfied that the estimates given are not far out of the way, and that they approximate the price which it would be necessary to pay to secure the lots if bought to-day, and the price at which they could be sold if held to await favorable opportunity for sale, and disposed in lots to suit purchasers, the owners paying the expense of sale.

In considerable part, however, this land is not now used and useful in the respondent's business. We will briefly describe the several tracts.

Dean Street Tract.

This tract, containing 33,000 feet, was bought by the Manchester company in 1877 for \$9,900. It is used as the site of an outlying holder, and is a necessary part of the respondent's plant.

* Included at cost to company.

Cottage Lots.

These lots, and the cottages thereon, were purchased by the Manchester company in 1869 for \$4,000. They passed to the People's company under the contract in 1887, and under the terms of that contract cannot be sold. They are rented to employees of the respondent, and the suggestion was made that it was convenient to have employees close at hand in case of emergency. The cottage buildings themselves are of slight value. Respondent's witnesses estimated the three to be worth from \$1,000 to \$1,050.

Reservoir Tract.

This tract was purchased in 1856 by the Manchester company for \$871.20. It was then, and continued to be until subsequent to 1887, valuable for use in connection with the gas business. A natural brook ran into the reservoir, and the water therefrom was taken, under a head of about thirty feet, to the gas works, where it supplied practically all of the needs of the works, except for drinking purposes. The water is now dried up, and the land is not put to any use. There is no prospect that it will ever be used in connection with the gas business.

Nutt Road Tract.

This tract contains 30,499 feet, and is part of a lot containing 54,376 feet bought by the respondent in 1887 for fifteen cents per square foot, making the original cost of the present tract apparently \$4,574. The respondent began the construction of gas works upon this lot in 1887, but abandoned the same when the contract was made with the Manchester company. The land has never been put to any use, and there is no indication that it will be hereafter used in connection with the present works. In fact it is admitted that the lot is not needed if the two properties remain together, but it is claimed that it is desirable for the respondent to hold as a site for gas works in case the present works pass out of its hands.

Gas Works Tract.

This tract is composed of two lots. The first contains 193,602 square feet, and is the site of the gas works, including all yard structures except one oil tank. It appears to contain the greater part of three lots purchased by the Manchester company as follows: 62,800 square feet in 1852 at 5 cents per foot; 73,922 square feet in 1859 at 5 42/100 cents per foot; 74,900 square feet in 1877 at 20 cents per foot. The second lot contains 101,000 square feet and lies contiguous to and immediately south of the first mentioned lot. It was conveyed to the Manchester company in 1909 in exchange for a portion of the three lots last mentioned above, and for a lot of land on Langdon Street purchased by the Manchester company in 1881 for \$10,125.

The land so exchanged was held by the People's company under the 1887 contract, but by agreement the exchange was made, and this lot substituted in place of the land exchanged.

This second lot is unoccupied except for an oil tank recently erected, which might equally well have been placed on the first lot, as is admitted by respondent's superintendent. He also testified, however, that the installation of a sidetrack across one end of the lot was under contemplation to enable the more economical unloading of iron pipe. The land, however, has been in the possession of the respondent for several years, and we think the sidetrack would have been put in before this if it were of importance.

Unused Property.

The respondent claims that all of the land and the cottages on the cottage lots should be included in the value of its property for rate purposes. We cannot so hold. When property is not used in the public service, and is not expected to be so used in the future, there is no justification for including it with property valued for rate purposes. The question whether property acquired in advance of actual needs, but expected some time to be used, should be

included depends upon the facts of the particular case. As we understand the law, the property actually used in the public service is all that a utility has a constitutional right to a return upon. We believe, however, that it would not be in the public interest always to hold utilities strictly to their constitutional rights upon this point. It may be good business judgment in some cases to anticipate future needs, so that suitable land, the need of which can be foreseen, may be acquired at a reasonable price. Utilities should not be obliged to pay taxes upon land so acquired, and to carry the same without return. Whenever acquired in the exercise of prudent business judgment, it should be included, if necessary to secure a fair return to the owners of the utility upon their entire advancement. But it should be kept clearly in mind that such inclusion rests not on legal right, but on grounds of public policy. It is not necessary that such inclusion should be made when the unused land has increased in value subsequent to purchase, or is increasing sufficiently to assure a reasonable return to the owners on their investment represented thereby; nor is it necessary when the increase in the value of the land actually used has been so great as to give the owners a generous return on their investment without including the unused property.

The lands in this case are well located and are generally enjoying a substantial increase in value. The extent of such increase is strikingly indicated by the following table, which shows the date of purchase, and the purchase price, and the present value testified to by Mr. Hayes.

TABLE ILLUSTRATING INCREASE IN LAND VALUES.

	Purchased	Purchase price	Present value	
Dean Street tract.....	1877	\$9,900	\$9,900 to	\$13,200
	1852	3,140		
Works tract *	1859	4,000	117,048 to	146,811
	1877	14,980		
	1881	10,125		
Cottage lots and buildings...	1869	4,000	2,845 to	3,202
Nutt Road tract	1887	4,574	6,710 to	9,150
Reservoir tract	1856	871	5,227 to	6,098
TOTAL ..		\$51,590	\$141,730 to \$177,961	

* In this item the purchase price of land exchanged for a portion of the present land is taken as the purchase price of such present land.

Since the above property was acquired all taxes and other expenses connected therewith have been paid as operating charges of the gas company; and it will appear later in this report that very generous returns have been continuously paid upon the entire investment of the stockholders.

This appears to be a case where the law as laid down in *Spring Valley Water Company v. San Francisco*, 165 Fed. 667, may well apply.

"It is not just to compel consumers to pay for more than they receive, or to pay complainant an income on property which is not actually being used. * * If in this case the company, in anticipation of the growth of the city and its future needs, acquired property for future use at a cost of hundreds of thousands of dollars which is now worth millions, it has acted wisely, but it should be satisfied with the goodness of its bargain and the enhanced value of its property, without asking in addition gratuities from its customers in the way of higher rates. When the property does come into necessary service, the company is entitled to have it credited at its then fair and reasonable value for rate fixing purposes." See also *Long Beach Commissioners v. Tintern Manor Water Company*, 70 N. J. Eq. 71.

In this case we find that the Reservoir tract and the Nutt Road tract are not now, and will not be hereafter used in the respondent's gas business, and that they should be disregarded in fixing value. We also find that the cottage lots and cottages thereon are not in any degree essential to the business of the respondent, and would not have been acquired by the respondent if they had not chanced to be a part of the property of the Manchester company when the contract with that company was made. They form no proper part of the gas properties, and should be, together with any revenue derived therefrom, excluded from consideration in determining the value and the revenues of the respondent's gas properties. We also find that said 101,000 foot lot, forming a part of the gas works tract, is not used in the present business of the respondent, except for the small part which makes a site for the oil tank before mentioned; that it is not in any part necessary for such use in the future within such reasonable time as to render it just

that the same should be added to plant value at this time. These findings are made without regard to any increase in land values.

Actual Cost or Present Value of Land.

The respondent claims that the allowance on account of land must be the full present value thereof regardless of original cost. Many authorities are cited. We shall quote from but four, and those cases from the United States Supreme Court, the authority of which, upon this point, is, of course, final.

"What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public." *San Diego Land and Town Company v. City of National City*, 174 U. S. 739 (decided May 22, 1899.)

"It is no longer open to dispute that under the constitution 'what the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.'" *San Diego Land and Town Company v. Jasper*, 189 U. S. 439 (decided April 6, 1903).

In *Willcox v. Consolidated Gas Company*, 212 U. S. 19, (decided Jan. 4, 1909), the Circuit Court had allowed for land at its present value, holding the original cost immaterial. The Supreme Court said:

"And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase. This is, at any rate, the general rule. We do not say there may not possibly be an exception to it, where the property may have increased so enormously in value as to render a rate permitting a reasonable return upon such increased value unjust to the public. How such facts should be treated is not a question now before us, as this case does not present it. We refer to the matter only for the purpose of stating that the decision herein does not prevent an inquiry into the question when, if ever, it should be necessarily presented."

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In the *Minnesota Rate* cases, 230 U. S. 352 (decided June 9, 1913), the lower court had included an allowance for land according to its value at the time of the inquiry regardless of original cost, and had made certain additions to such value on account of the "adaptability of the land for railroad purposes," and for "engineering, contingencies," etc. Upon this point the court said:

"Assuming that the company is entitled to a reasonable share in the general prosperity of the communities which it serves, and thus to attribute to its property an increase in value, still the increase so allowed, apart from any improvements it may make, cannot properly extend beyond the fair average of the normal market value of land in the vicinity having a similar character. Otherwise we enter the realm of mere conjecture. We therefore hold that it was error to base the estimates of value of the right of way, yards, and terminals upon the so-called 'railway value' of the property. The company would certainly have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity, without additions by the use of multipliers, or otherwise, to cover hypothetical outlays. The allowances made below for a conjectural cost of acquisition and consequential damages must be disapproved; and, in this view, we also think it was error to add to the amount taken as the present value of the lands the further sums, calculated on that value, which were embraced in the items of 'engineering, superintendence, legal expenses,' 'contingencies, and interest during construction.'"

It will be noted that the "present value" rule unhesitatingly declared in 1899, in 1909 is stated to be "at any rate the general rule," and that in 1913 it is "assumed" to be the law.

In view of the present state of the decisions, however, we think that we should not be justified in making allowance for land values upon any other basis than that of the value today, without regard to original cost, and we shall accordingly make full allowance upon that basis for all the land used in the respondent's business, including the site of the oil tank on the 101,000 foot lot. We find such present value to be not more than \$90,000. Other land not used is wholly disregarded.

WORKING CAPITAL.

The respondent claims an allowance for working capital equal to the amount of stores and supplies on hand, and \$55,000 in addition thereto.

It is clear that the respondent's gas works and distribution system are not all that is necessary to enable it to supply gas service to the city of Manchester. It must have stores of coal, oil, and other materials necessary to the manufacture of gas; it must have office supplies; in order to make street main extensions economically, and to meet increased demand for service as it arises, it must have a stock of pipe and other street main materials and a stock of meters; and in order to carry forward effectively the work of educating the public to the use of its products, it may also require to have on hand a stock of gas stoves, heaters and other gas consuming appliances carried for sale to the public. It must have, as well, money to pay its employees while the gas is being manufactured, and while bills are being put out therefor, and payment collected. The capital invested for the purposes mentioned is just as much devoted to the public use as any portion of the company's plant, and must be included in the base value upon which rates are fixed.

Strictly speaking it may be that the expense of making extensions should not be at any time provided for out of working capital, inasmuch as, when the plant is valued for rate purposes, interest during construction is claimed, and if the rate payers at the time of the construction pay a return upon working capital, and later a return on a portion of plant cost allowed as "interest during construction," double payment will be made. This was admitted by Mr. McClellan in his testimony upon this point. But the valuation is made for the purpose of giving the utility a fair return upon its investment, and that investment should be recognized where it actually is, rather than where a valuation expert, estimating the cost of a hypothetical reproduction, may say that theoretically it ought to be placed. If

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the public utility in fact provides itself with a working capital sufficient to carry materials and pay for labor for extensions without borrowing, we think all the capital so provided, and necessary for those purposes, may be allowed as a part of the value upon which rates are based and in valuing mains which are built as extensions, while interest during construction may appear as a part of the estimated cost of reproduction, just as does the cost of paving over mains, regardless of when such paving was laid, the fact that no interest during construction was actually incurred, as a part of the original cost, may be considered upon the same principle as the facts with reference to the payment of the expense for paving may be considered.

According to the respondent's books, the stores and supplies on hand July 1, 1913, amounted at cost to \$55,706. Of this sum \$28,065 was represented by street main materials, gas appliances and other store room supplies, and \$27,641 by coal, oil and other supplies necessary for the generation and purification of gas. It also had on hand a stock of meters, but these are included in the inventories of the engineers. The respondent's superintendent testified that January 1 would be a reasonable time in the year to get a fair average for stores and supplies; that the stock of coal on hand might be high, and the street main material lower, but that no injustice would be done the respondent if the average was taken as of that date. The average value of stores and supplies on hand January 1 for the five years preceding the appraisal was \$41,942.

The claim for additional working capital was based upon the testimony of Mr. Curran, the respondent's comptroller, that on July 1, 1913, the accounts receivable amounted to \$36,691, the cash on hand to \$34,530, making a total of \$71,221, and that the accounts payable amounted to \$9,361, and the accrued accounts to become due to \$8,347, making a total of \$17,708. The difference of \$53,513 the respondent claimed to be its actual working capital on the date named.

Mr. McClellan also testified that the working capital, in addition to the amount invested in stores and supplies, ought to be \$55,000 to cover the following items:

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1½ months operating expenses, exclusive of stores and supplies..	\$14,400
Bills more than 30 days due the company.....	17,500
Bank balance	15,000
Capital for extensions.....	8,000
	<hr/>
TOTAL	\$54,900
	<hr/>

We do not accept the difference between cash and accounts receivable, and accounts payable and to become payable, as a correct measure of the working capital additional to stores and supplies. It leaves out of sight the fact that included in the cash would be money accumulated for the payment of rent to the Manchester company, and money accumulated for payment of the August dividend, and probably other moneys not properly classed as working capital. It also assumes that the rate payers should pay interest to the utility on uncollected bills. We do not see any reason why this should be done. It is largely optional with the respondent whether it will collect its bills promptly, or allow a large amount to be ordinarily outstanding. It may so draw its rate schedule as to encourage prompt payment, if it will. Its request upon that point will be later considered in this report. It seems to us that all the working capital the respondent can fairly ask is the amount invested in stores and supplies, operating expenses for a reasonable period, and a reasonable amount for current street main extensions. We accept Mr. McClellan's estimate upon these items as approximately correct.

The necessity of allowing \$15,000 as a bank deposit, to induce a bank to carry the respondent's deposit, we think is fanciful. The respondent collects every month over \$20,000. This is used in part for operating expenses, and in part is held to accumulate for distribution in quarterly rentals and semi-annual dividends. Our knowledge of banking conditions in New Hampshire leads us to believe that this account will not be unwelcome in any bank, even if the \$15,000 for an undistributed balance, in addition to all other moneys, is not kept.

An allowance of \$75,000 for stores and supplies we believe to be sufficiently generous.

DEPRECIATION.

We have already seen that upon their inventory Mr. Huddle's firm estimated the accrued depreciation of the property by the respondent, exclusive of paving, at \$205,331, and including paving, at \$222,232; and we have also seen that Mr. McClellan estimated the same, excluding paving at \$124,476, and including paving at \$133,559. Mr. Huddle testified that his depreciation was based upon age and inspection, so far as the properties were open to inspection, and that the computation of depreciation followed the 4 per cent. sinking fund curve.

The sinking fund curve method of computing depreciation has been commonly followed by the Wisconsin Commission. It is described by Mr. Whitten, in his very valuable work upon *Valuation of Public Service Corporations*, at Page 334, as follows:

"The sinking fund method assumes that an amount is set aside each year which invested at compound interest will equal the total wearing value at the end of the assumed life. The depreciation at any time is said to exactly equal the amount that is or should be in a sinking fund accumulated in this way. Under the sinking fund method the existing depreciation found it always less than it would be under the straight line method. The degree to which it varies will depend largely on the rate of interest at which the fund is assumed to accumulate. The higher the rate of interest assumed, the smaller will be the existing depreciation under the sinking fund method as compared with what it would be under the straight line method. The difference between the two methods is not great for a unit with a short life but for a unit having a fifty year life the excess of the existing depreciation as shown by the straight line method over that shown by the sinking fund method may be enormous."

The straight line method of depreciation is described in the same work, on Page 332, as follows:

"Under the straight line theory it is assumed that the wearing value decreases uniformly each year during the assumed life. If the assumed life is ten years and six years of such life have elapsed, the existing depreciation amounts to six-tenths of the total wearing value. This method is the one most largely used in appraisals for all purposes."

For the purpose of having before us evidence as to the extent of the depreciation of these properties computed upon the straight line basis, we requested the engineers for the Commission to compute the depreciation upon that basis, and they did so, and the computation was introduced in evidence. The result was as follows:

REPRODUCTION COST OF MANCHESTER COMPANY AND PEOPLE'S COMPANY PROPERTIES COMBINED, AND SUCH COST LESS DEPRECIATION COMPUTED ON STRAIGHT LINE BASIS.

	<i>Cost of reproduction</i>	<i>Less depreciation</i>
Buildings	\$110,673	\$75,609
Apparatus	114,170	69,095
Holders and housings	223,855	135,243
Oil tanks	5,370	3,420
Yard structures, etc.	52,837	33,626
Distribution system	415,226	236,899
TOTAL	\$922,131	\$553,892
Overhead, 15 per cent.	138,320	83,084
TOTAL	\$1,060,451	\$636,976
Paving	88,621	67,980
TOTAL	\$1,149,072	\$704,956

It will thus be seen that there is a difference in the amount of the depreciation of \$221,884, accordingly as it is computed upon the straight line or the 4 per cent. sinking fund curve basis.

In discussing the two methods of computation Mr. McClellan said:

"If (the unit to be valued) was half gone I would have to give 50 per cent. depreciation (on the straight line basis), and if I used 4 per cent. as the curve it might be something else, and I do not see why I should use one rather than the other * * *. One is very favorable. One swings down the early years, and gives you very little depreciation. The 4 per cent. gives you very little. It is a curve that swings down. The straight line goes right down."

Counsel for the respondent have argued in their brief that depreciation should be always disregarded in fixing value for rate purposes, so long as the depreciation does not interfere with the efficiency of the property. They say:

"It is obvious that, if rates are to be fixed which will not furnish a return upon the full value of the property new, then when the parts are replaced from time to time and the 'accrued depreciation' is thus wiped out, there will be no return provided to the stockholders by the rate in question upon this part of their investment. In other words, the consumers must always pay a return upon the full value of the property, or else nothing is provided for a return upon the full value of wearing apparatus as it is replaced. * * *

"Whether a reserve fund, equal to the amount of the estimated accrued cost of replacement, has been created or not, makes no difference whatever, except to the owner; since the liability to make such replacement is not affected by the existence or non-existence of a reserve fund. In the advantage of having such a fund or in the disadvantage of not having one, the user of the service has no share. Therefore, whatever cost of replacement may or may not be estimated to have accrued, or whether or not there exists a fund equal to the amount of replacement which may be estimated to have accrued, no ground whatever is represented for any modification of the rates charged for the service, unless it can be shown that the existing rates are inadequate to yield a fair return upon the reproduction value of the property and to provide a fund for the replacement of the property, when withdrawn from service, in which case the rate should be increased."

This argument, however, is not as unanswerable as might seem at first glance. Not all of the depreciation in a given utility plant will be removed at any one time. If a rate is fixed this year which will pay a return upon the present depreciated value of the entire plant, and next year certain units are replaced by new units, the depreciation of those units will be wiped out, but in the meantime, as to all other units, a further depreciation will have occurred, so that the depreciated value after the substitution is very likely not to vary materially from the depreciated value at the time the rate was fixed.

The respondent's argument contemplates that renewals are to be made either from a reserve fund, or from funds provided by the utility in recognition of its liability to keep

the property in good operating condition. But when an adequate depreciation reserve is kept the value of physical properties will not ordinarily fluctuate by reason of depreciation.

A depreciation reserve is a fund set aside out of earnings to offset accruing depreciation. It should each year equal the average yearly depreciation, but ought not to exceed it. The utility ought to be permitted to keep its plant good from the returns collected, but not to increase its value.

Our law wisely provides that a depreciation reserve may be used "for new construction, extensions, or additions to physical property, or for renewing, restoring, replacing or substituting depreciated property."

The normal growth of a public utility will ordinarily afford full opportunity for the investment of the entire depreciation fund in extensions when not required for renewals. Accordingly, if the depreciation reserve is adequate, and is so invested, the utility will at all times have invested in plant, or in the plant and in the depreciation fund in course of investment, the full amount of the original value of the original properties; and a return upon the depreciated value of the original properties and upon the value of the extensions and additions representing the depreciation reserve, including any amount in course of investment, will give the utility all that it is justly entitled to. That method of handling the depreciation problem is in accordance with the statute, and is simple and desirable. Whenever the value of additions and improvements and funds in course of investment equals in amount the depreciation, we shall handle the case on that basis. When they do not, we shall consider the facts of the particular case as they may appear, and endeavor to give such weight only to accrued depreciation as may be just to the utility, having due regard always to the rights of the public. We do not, however, mean to imply any assent to the proposition that the supposed liability of stockholders to keep their property in efficient operating condition can in any case take the place of any portion of the value of the property withdrawn in dividends,

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which ought to have been re-invested in the plant, or placed in a depreciation fund. In actual experience it proves too difficult to realize upon this supposed liability to make it safe to encourage its substitution for the actual provision against depreciation, which it is the duty of the utility to make. And the law is settled otherwise by the *Knoxville Water Company* case and numerous other cases.

It is self-evident that it would be unjust to the public to require a return to be paid upon the full undepreciated value of the original property, and upon the extensions made from the depreciation fund as well. And yet that is what the respondent is in fact asking here. A very large part of its plant has been built up out of earnings, in addition to the payment of very generous returns upon the original investment.

It did not require the passage of Chapter 98 of the Laws of 1913 to give the respondent a right to make proper reservation out of earnings to keep its plant good. The United States Supreme Court in the *Knoxville Water Company* case said:

"Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation at least its plain duty to the public."

If, then, it was the duty of the respondent to keep the value of its property unimpaired, and it did so by building extensions, and by replacing units of its property with larger and better units, is there any doubt that the property so added from earnings, to the extent at least of such depreciation as has accrued, can be considered as a depreciation reserve. Can it make any difference that upon the books of the company it has been designated "profit and

loss" instead of "depreciation reserve?" We think the law has regard to the substance and not the form; and we find as a fact that the respondent and the Manchester Gas Light Company have both regarded their surplus as a depreciation reserve to such extent as there was occasion for such a reserve, and we further find that justice requires that the same should be so treated in this case.

So far, at least, as the additions and betterments made from earnings constitute a reserve to cover depreciation, the respondent has no right to earn a return thereon, in addition to a return upon the undepreciated value of the original properties. This matter was before the United States Supreme Court in *Louisiana Railroad Commission v. Cumberland Telephone and Telegraph Company*, 212 U. S. 414. In that case it was claimed that a part of the property upon which the defendant claimed a return was erected out of the depreciation reserve. The court said:

"It was obligatory upon the complainant to show that no part of the money raised to pay for depreciation was added to capital upon which a return was to be made to stockholders in the way of dividends for the future. It cannot be left to conjecture, but the burden rests with the complainant to show it. It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and, having collected it, to use it in another way upon which the complainant would obtain a return and distribute it to its stockholders. That it was right to raise more money to pay for depreciation than was actually disbursed for the particular year there can be no doubt, for a reserve is necessary in any business of this kind, and so it might accumulate, but to raise more than money enough for the purpose and place the balance to the credit of capital upon which to pay dividends cannot be proper treatment. * * * We are not considering a case where there are surplus earnings after providing for a depreciation fund and the surplus is invested in extensions and additions. We can deal with such a case when it arises."

It will be noted that this case leaves open the question whether additions and extensions built out of earnings,

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after making provision for depreciation, may properly be included in the base upon which returns are to be computed.

The only cases that have come to our notice, where the question has been decided, have held the utility entitled to the full benefit of the ownership of such property. *Brymer v. Butler Water Company*, 179 P. 231; *Kennebeck Water District v. City of Waterville*, 97 Maine 185. See also *Fall River Gas Works Company v. Board of Gas and Electric Light Commissioners*, 214 Mass. 529.

The body of the law relating to the rights and duties of public service corporations, and the regulation thereof by state authority, is, however, still in the formative period. The United States Supreme Court may yet hold that additions and betterments built out of earnings ought not to be included in fixing value for rate purposes. The problem of public regulation would be much simplified if such were the law. At the present time, however, we do not think that we can properly go further than to hold that such additions and betterments constitute a depreciation reserve to such an extent as it may appear reasonable that the utility in question should have made provision against depreciation.

In this case, we think we should treat such additions and betterments as a depreciation reserve to the extent of all depreciation which we find has actually accrued. This includes not only physical depreciation arising from age, use and natural deterioration, but functional depreciation as well, arising from changes in the art, which render the substitution of other physical units desirable; or arising from any occurrence other than physical deterioration, which in fact lessens the usefulness and value of the property in question.

Any other course than this would seem to be palpably unjust to the public. It was the duty of the respondent to make a sufficient reservation out of income to keep these properties good, and it was the duty of the public to pay a sufficient amount in rates to enable this to be done. The

public has in fact paid the amount necessary to enable the reservation to be made, and the reservation has been made, but it has not been specifically so designated upon the books. The contention of the respondent in effect is that it should be rewarded for its failure to set up a depreciation reserve account upon its books by the addition to its plant capital of the full provision made against depreciation. As before indicated, it does not seem that the failure of the respondent to keep proper books, or its failure to keep any books at all, can affect the rights of the parties. If the provision against depreciation has been in fact made by additions to plant, it should be considered as counterbalancing accrued depreciation, but not as constituting any further basis for rate purposes.

The principles here discussed become very important in this case, because it is evident that there is a wide margin between the amount which it would cost to reproduce new to-day the properties operated by the respondent, and the value of those properties if so reproduced. This is due in part to changed conditions, and in part to improvements in the art, which render a part of the respondent's property no longer useful in proportion to its cost.

The distribution system consists in considerable part of very small mains, which will require to be replaced by reason of inadequacy in size long before they become inadequate in any other sense. This inadequacy of gas mains was considered by Mr. Huddle in estimating the extent of the depreciation of the distribution system. He did not, however, take into account inadequacy or obsolescence in estimating the depreciation of any other portion of the plant.

The present holders, with one exception, were built long ago, and are housed in brick buildings. Experience has demonstrated that these housings are unnecessary. The advantages derived therefrom are very slight and wholly out of proportion in value to the money invested in the housings. The holders, too, have been built from time to time, to keep pace with the growth of the gas business in

Manchester, so that there are now five holders where three larger holders would suffice, if a plant were to be built to-day to supply the existing business.

There is also a present over capacity in holders, secured at an expense of from \$16,000 to \$19,000. Authorities before cited would justify a disregard of this additional capacity in fixing value for present rate purposes. We have, however, not taken this over capacity into account, because it has seemed to us that the respondent exercised good business judgment, when building the last holder, in building somewhat in advance of the existing demand, and, inasmuch as no accretions in value can be expected upon this particular property, it would seem that it ought fairly to be included for rate purposes.

The excessive investment in holders and housings, which arises from the fact that there are five small holders, four of which are housed in brick, whereas three larger holders, built at a much less cost, would suffice, we think must be considered. The fact that brick housings have not been built anywhere for many years has considerable tendency to show that they are not worth what they cost. And the evidence in this case abundantly proves that fact. Nobody building a plant to-day, to supply gas in Manchester, would build the number of holders that are now there, or house the same in brick buildings; and nobody desiring to purchase the Manchester plant would give very much more for five holders erected and housed as the present holders are housed, than he would to secure the same capacity in holders built according to modern methods, if indeed he would give as much. We find as a fact that the present holders are not more valuable than other holders that could be erected to perform the same service that the present holders perform for from \$125,000 to \$135,000.

The gas machinery now used by the respondent is for the most part worth far less than it would cost to reproduce the same. The question of discarding most of it, and installing a modern coal gas plant, has been under consideration. It was testified that the change would cost \$250,-

000, but it would effect a saving of 10 cents per thousand feet of gas manufactured. When it is noted that upon the present output the annual gross saving would be upwards of \$24,000 it is evident that while the present plant may be efficient in operation in the way it was designed to operate, yet in comparison with plants equipped with modern apparatus it is not efficient.

This must be considered in fixing value. It affects the usefulness of the plant, and the amount which it can earn in profits upon every thousand feet of gas manufactured. It would largely affect the price upon sale, for a purchaser would contemplate the early discarding of the present machinery. In fact the change could be made with profit at the present time, as the resultant saving would be sufficient to pay 6 per cent. upon the estimated investment, 2 per cent. for depreciation, and leave an annual saving of \$4,000. The evidence upon this point came from the respondent's superintendent, who has made a careful study of the situation.

In addition to the evidence as to reproduction cost and extent of accrued depreciation, however, there are several other classes of evidence which are also to be considered in placing a value upon these properties.

ORIGINAL INVESTMENT AND RETURNS THEREON.

Manchester Gas Light Company.

The amounts originally invested by stockholders in this enterprise can be determined with a considerable degree of accuracy. The incorporators of the Manchester company in 1852 subscribed for \$100,000 of its capital stock, and that amount was paid into the treasury in various installments in cash. There was no other or further contribution by the stockholders of the Manchester company. It appears that \$90,000 was invested in physical properties, and the construction account was then closed. All subsequent additions to property were paid for out of earnings, and no such books of account were kept as to make it possible to ascertain the actual first cost of the present properties.

The stockholders have received dividends as follows:

MANCHESTER GAS LIGHT COMPANY DIVIDENDS.

	<i>Per Cent.</i>
1852 . . . . .	.64
1853	7.5
1854 to 1857, inclusive.	10
1858	6
1859 to 1868, inclusive.	10
1869	18
1870 to 1872, inclusive.	10
1873 to 1880, inclusive.	12
1881	17
1882	20
1883	120
1884	70
1885 and 1886	20
1887	123
1888 to 1913, inclusive.	32

The original investors have, therefore, received more than 24 per cent. per annum since 1852 upon their original contribution to the public service.

In addition the Manchester company has also accumulated a surplus in cash and current assets amounting to \$27,751, which is available for dividends, and has built up its properties to their present value.

People's Gas Light Company.

Upon the organization of the respondent corporation in 1887 the incorporators subscribed for \$100,000 of its capital stock, and 80 per cent. of that amount was called in various installments by July 1, 1887, the last installment being called on that date. No further installment was called till January 14, 1888, when the remaining 20 per cent. was called. This was followed on January 8, 1888, by the declaration of a 20 per cent. dividend upon the stock held by the subscribers. Whether the 20 per cent. called was actually paid into the treasury, and then paid out in the dividend, or whether the dividend was credited in payment of the last installment due upon the stock does not

appear, but, in any event, it is clear that the effect of the transaction was not to increase the corporate assets of the respondent, but to give to its stockholders paid up stock for 80 per cent. of its par value actually contributed to the enterprise.

At a meeting of the stockholders held January 17, 1888, it was "voted unanimously to increase the capital stock of the People's Gas Light Company, from one hundred thousand dollars to three hundred thousand dollars, and that said increase, in consideration of a contract which this company has authorized to be made by its treasurer, W. L. Elkins, Jr., of Philadelphia, be issued full paid and not subject to any assessment or liability except as provided by law, as part consideration of above referred to contract."

At a meeting of the board of directors held February 8, 1888, Martin Maloney, until then a member of the board, resigned, and thereupon it was "moved * * and passed unanimously, that the contract which W. L. Elkins, Jr., treasurer, has made with Martin Maloney of Philadelphia to construct a water gas plant be accepted and approved and the contract placed on file. * * and that the increase of the capital stock authorized by the stockholders at their annual meeting be made and the certificates issued therefor, dated on the fifteenth day of February, 1888, and that said increase of two thousand shares be issued to M. Maloney, contractor, in part payment of the above referred to contract."

There is nothing except these two votes to indicate what the terms of the contract referred to were, it being testified by the officials of the respondent that said contract and the books of account of the respondent prior to 1891 could not be found.

A water gas plant was, however, constructed by Martin Maloney, and the \$200,000 of stock was issued to him as provided by the above votes. There is no evidence tending to show the value in 1888 of the water gas plant installed. It is, however, largely still in use, and it would appear that the present reproductive cost of the property installed by

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Mr. Maloney is less than \$25,000. It is certainly safe to assume that if the original cost exceeded \$25,000 it did not reach \$50,000. It is not probable that it approached that amount.

In this stock transaction may perhaps be found the reason for the original appearance in Manchester of Mr. Maloney and his Philadelphia associates.

On June 7, 1909, it was voted to increase the capital stock of the respondent corporation from \$300,000 to \$500,000 "for the purpose of building a new gas holder and making other permanent additions and improvements and additions to the plant."

At the beginning of that year the respondent had on hand in cash \$21,792.89, with only about the usual amount of stores and supplies and accounts receivable. If new construction was to be undertaken it was necessary to secure new capital, and the obvious way to secure the same was to issue securities. The entire cost of the holder, according to the books of the company, however, was only \$62,097. The total addition to property accounts in 1909, including the holder, was only \$71,995; and in 1910 the further addition was but \$32,032, making \$104,027.

The respondent did not need, therefore, \$200,000 new capital in 1909. It was not, in fact, intended to secure that amount of new capital. The vote of the stockholders to issue \$200,000 of new stock was passed on May 17. On May 18 the directors declared an extra dividend of 25 per cent., and on the same date voted to sell \$35,000 of bonds held in the respondent's treasury. It appears, however, that the bonds were not actually sold until a rather recent period.

It was testified that the extra dividend was actually paid in cash before the new stock was issued. How the payment was financed does not appear from the evidence, and is not important. The result of the whole transaction was that the company issued \$200,000 in stock and increased its available cash \$125,000.

The amount of money paid into the People's company by stockholders may, therefore, be stated as follows:

MONEY ACTUALLY PAID INTO TREASURY OF PEOPLE'S COMPANY BY STOCKHOLDERS.

By incorporators upon organization.....	\$80,000
By Maloney (not more than).....	50,000
In 1909	125,000
<hr/>	
TOTAL	\$255,000

The \$80,000 originally paid in, however, was never fully invested in physical properties. Under the contract with the Manchester company \$50,000 in bonds had to be deposited to secure the performance of that contract. These bonds were purchased with the proceeds of the stock issued, and the bonds were deposited under the terms of the contract. Later under other terms of the contract they were returned to the respondent, and were at one time in part converted into cash. The investment in bonds or other investment securities has, however, never been less than \$35,000, and is now upwards of \$60,000. It is evident that money so invested is not devoted to the public use, and has been in no way entitled to a return from the operations of the respondent's gas business.

Returns to Stockholders of People's Company.

In addition to the 20 per cent. dividend paid to the original subscribers in 1888, of which mention has already been made, regular dividends have been paid upon all the stock outstanding since 1889, including that year. Such dividends have been at the rate indicated by the following table:

PEOPLE'S GAS LIGHT COMPANY DIVIDENDS.

	<i>Per cent.</i>
1889 to 1892, inclusive.....	6
1893	3
1894 to 1895, inclusive.....	9
1896	7
1897 to 1898, inclusive.....	8
1899	7
1900 to 1901, inclusive.....	6
1902	4
1903 to 1904, inclusive.....	5
1905	8
1906 to 1909, inclusive.....	6
1909	31
1910 to 1913, inclusive.....	6

It is contended that the 1909 extra dividend of 25 per cent. was a division of the existing surplus, which the stockholders had a right to make; and it is true that at the time dividend was made the corporation had a book surplus amounting to \$306,211.15. On January 18, 1910, the directors voted to reduce the property accounts by \$200,000, charging the same to profit and loss, the entry to be made as of December 31, 1909. Concerning this the comptroller testified as follows in answer to the following questions:

" Q. (*By Commissioner Benton*) The idea in marking off that \$200,000 was to take care of items which had been discarded or of deterioration in items which you are still using? A. It primarily, I would say, would be to correct the property account and leave it more in keeping with the actual value * * * .

" Q. (*By Mr. Jones*) Does it come to this that for every dollar shown in that statement (the present property account) of \$468,960, a dollar has gone into the plant? A. Yes, sir, and more too."

It is probable that the intent in 1909 was to write off \$200,000 to cover inflation of the property accounts recognized to have taken place when \$200,000 in stock was paid to Maloney for installing the water gas house and equipment. The amount of surplus not required for that pur-

pose was undoubtedly considered properly available for dividends. Viewed upon this basis, the stock has received returns as follows:

TABLE SHOWING RETURN ON PAR VALUE OF DIFFERENT ISSUES OF PEOPLE'S COMPANY STOCK AND ON AMOUNT ACTUALLY PAID IN THEREFOR.

	<i>Per cent. on par value</i>	<i>Per cent. on amount actually paid in</i>
Stock issued to original subscribers*.....	7.00	8.75
Stock issued to Maloney (assuming consideration \$50,000)	7.1	28.4
Stock issued in 1909 (extra dividend being considered cash paid in).....	6.	6.
Average return on total amount actually paid in for total period the same was invested.....		14.08

To recapitulate — there have been paid into the two corporations since their organization the following amounts, actually advanced by stockholders:

TABLE SHOWING TOTAL ACTUAL PAYMENTS BY STOCKHOLDERS OF BOTH COMPANIES.

In 1852	\$100,000
In 1887	80,000
In 1889 (property worth not more than).....	50,000
In 1909	125,000
TOTAL	\$355,000
Considering extra dividend in 1909 as cash paid in.....	75,000
TOTAL	\$430,000

Partly from money originally paid in, and partly from excess in earnings, there have been invested in non-operating properties the amounts following:

* In the preparation of this table the 20 per cent. installment called from stockholders January 14, 1888, and the 20 per cent. dividend declared February 8, 1888, have been considered as mere bookkeeping transactions, and accordingly disregarded.

TABLE SHOWING INVESTMENTS IN NON-OPERATING
PROPERTIES.

MANCHESTER COMPANY.

Langdon Street lot*	\$10,125	
Cottages	4,000	
Reservoir tract	871	
Cash and securities	27,751	
	<hr/>	\$42,747

PEOPLE'S COMPANY.

Nutt Road tract	\$4,574	
Investments	60,413	
	<hr/>	64,987

TOTAL	<hr/>	<hr/> <hr/> \$107,734
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It is impossible to determine exactly to what extent these non-operating properties represent accumulated earnings, and to what extent original capital. It is probable that the Manchester properties were purchased wholly from earnings; on the other hand, the People's company land, and \$35,000 of the securities, represent a continuous investment of original capital.

Original Cost of Present Properties.

In the construction accounts of the two corporations all of the present properties of the two corporations are carried as follows:

CONSTRUCTION ACCOUNTS.

Manchester company	\$90,000
People's company	468,960
	<hr/> <hr/>

The Manchester company account, as has been indicated, bears no relation whatever to the actual cost of the properties belonging to that corporation, which were largely con-

* Exchanged for unused 101,000 foot lot. The original cost of other land included in the exchange is not known.

structed out of earnings after the construction account was closed. The People's company account, having been written down \$200,000, as before mentioned, contains nothing to cover the cost of the water gas plant constructed by Maloney; but on the other hand it includes \$7,600 for land heretofore sold or now unused, and the cost of abandoned construction on the Nutt Road tract.

AMOUNT AND MARKET VALUE OF SECURITIES OUTSTANDING.

The testimony indicates that the market value of the Manchester company stock is \$650 per share, and of the People's company stock \$120 per share. There are no bonds. The amount and market value of the securities may, accordingly, be tabulated as follows:

TABLE SHOWING AMOUNT AND MARKET VALUE OF
SECURITIES.

	<i>Par value</i>	<i>Market value</i>
Manchester company stock.....	\$100,000	\$650,000
People's company stock	500,000	600,000
	<hr/>	<hr/>
TOTAL	\$600,000	\$1,250,000
	<hr/>	<hr/>

In coming to our conclusion as to value in this case, we have carefully considered the evidence offered as to value of securities, but find as a fact that it is entitled to very little weight. The rental paid by the respondent assures to the Manchester company stockholders a dividend of 32 per cent. per annum upon their stock; and the remaining \$500 of the rental paid goes to swell an already large surplus in the treasury of the corporation, which is available for dividends at any time. These facts, together with the prospect of selling their property, under the terms of the contract with the respondent, for one million dollars at the expiration of the contract, operate to give a wholly artificial value to the Manchester company stock. In the same way the value of the People's company stock has doubtless been to a considerable degree affected by the common knowledge of the great earnings made and distributed by

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the Manchester company, as well as by the large earnings of the People's company itself, which have been sufficient to enable the payment of the dividends which have been before tabulated, and the building up of the physical properties as above set forth.

We have, accordingly, felt that the market value of these securities was probably so largely affected by circumstances having little relation to the true value of the property, that we could not safely attach very much weight to evidence of such value.

We also find that the present market value of the stock of both corporations is due in part to earnings made by the exaction of unreasonable rates for the service supplied by the properties which such stock represents, and that by reason of that fact it would be unjust to attach any considerable weight to evidence of such market value.

ESTABLISHED BUSINESS AND RESULTS OF OPERATION.

The number of meters in service, and the volume of business done in 1891 and each year since are shown by the following table:

TABLE SHOWING ANNUAL BUSINESS SINCE 1891.

PERIOD 12 MO. ENDING:	No. of customers, or meters in service	Gas sales per cubic foot	Rate per M.C.F. (for all pur- poses).	Discount allowed for prompt payment
Dec. 31, 1891.....	3,136	84,279,900	\$1.70	\$0.30
Dec. 31, 1892.....	3,327	97,490,400	1.70	.30
Dec. 31, 1893.....	3,449	98,907,200	1.70	.30
Dec. 31, 1894.....	3,619	95,170,400	1.70	.30
Dec. 31, 1895.....	3,772	99,885,000	1.70	.30
Dec. 31, 1896.....	3,950	101,907,200	1.70	.30
Dec. 31, 1897.....	4,116	88,300,300	1.70	.15
Dec. 31, 1898.....	4,247	85,147,600	1.70	.15
Dec. 31, 1899.....	4,628	87,468,800	1.40	.15
Dec. 31, 1900.....	5,014	91,876,100	1.40	.15
Dec. 31, 1901.....	5,349	98,890,000	1.40	.15
Dec. 31, 1902.....	5,697	108,044,800	1.40	.15
Dec. 31, 1903.....	6,044	116,233,700	1.40	.15
Dec. 31, 1904.....	6,288	119,961,500	1.40	No discount
Dec. 31, 1905.....	6,628	126,262,800	1.40	No discount
Dec. 31, 1906.....	7,009	134,820,100	1.40	No discount
Dec. 31, 1907.....	7,559	142,300,400	1.10	No discount
Dec. 31, 1908.....	8,271	146,945,900	1.10	No discount
Dec. 31, 1909.....	9,547	173,335,000	1.10	No discount
Dec. 31, 1910.....	9,826	194,269,000	1.10	No discount
Dec. 31, 1911.....	10,571	201,772,400	1.10	No discount
Dec. 31, 1912.....	11,382	221,607,700	1.10	.15
June 30, 1912.....	11,142	209,039,600	1.10	.30
June 30, 1913.....	11,710	227,377,400	1.10	.30

The results of operation for the past five years, are shown by the appended table.

FINDING OF VALUE.

Upon consideration of all the evidence in the case, we find that the value of all the properties owned or operated by the respondent, and devoted to the public use in supplying gas service in the city of Manchester, does not exceed \$900,000.

AMOUNT OF RETURN.

The respondent claims that it is entitled to earn 8 per cent. upon the value of its property, and respondent's counsel, in their brief cite a considerable number of cases where 7 per cent., 7½ per cent. and 8 per cent. returns have been allowed. Other cases might be cited where the courts have upheld rates giving a return of 6 per cent., 5 per cent. and even less. None of these decisions greatly aid.

"There is no particular rate of compensation which must in all cases and in all parts of the country be regarded as sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and locality; among other things, the amount of risk in the business is a most important factor, as well as the locality where the business is conducted and the rate expected and usually realized there upon investments of a somewhat similar nature with regard to the risk attending them. There may be other matters which in some cases might also be properly taken into account in determining the rate which an investor might properly expect or hope to receive and which he would be entitled to without legislative interference. The less risk, the less right to any unusual returns upon the investments." (*Willcox v. Consolidated Gas Co.*, 212 U. S. 19.)

What are the facts in this case, and are the risks large or small? Probably no public utility enterprise in New Hampshire has a more certain prospect of continued prosperity than that of the respondent. It has a monopoly of the gas business in the largest city of the State, and this monopoly is practically assured to it by law. It has a history of uninterrupted and large profits since its inception in 1852. The city is growing, and the respondent's gas business must also grow. It is difficult to imagine a safer investment.

Miscellaneous advertising.....	1,370.95	1,041.20	902.34	715.07	678.86	914.37
Newspaper advertising.....			764.34	713.85	701.84	1,018.97
Soliciting.....	4,536.95	4,949.87	6,209.66	5,946.09	5,804.12	6,621.29
Appliance, demonstration.....	693.85	873.59	876.55	938.50	1,028.95	845.56
Appliance, exhibitions.....			79.42	389.93	142.99	479.22
Arc lamp maintenance and rental.....	122.67	238.85	307.10	49.42	60.21	*54.10
Incandescent burner maintenance.....	26.04	107.22	168.22	66.56	138.26	36.74
Uncollectible sundry sales bills.....			153.00	202.85	193.97	178.62
TOTAL NEW BUSINESS.....	\$7,927.97	\$8,678.27	\$11,449.41	\$11,185.63	\$10,923.75	\$12,177.28

Expense:

Accidents and damages.....	\$1,036.64	\$688.74	\$1,109.72	\$1,218.82	\$1,149.68	\$7,228.69
Association meetings.....	294.61	599.75	831.38	627.48	916.16	553.47
Expense, general.....	354.59	636.59	2,487.40	942.01	2,651.50	164.61
Expense, extraordinary.....	439.60	339.63	97.26	179.60	101.63	157.75
Insurance.....	1,006.72	916.31	1,035.93	1,053.28	1,007.98	1,109.53
Interest.....	181.26	40.29	71.51	96.72	109.60	51.53
Litigation.....	337.00	300.00	1,016.08	200.00	1,116.07	825.23
Salaries, general.....	430.00	420.00	405.00	400.00	405.00	405.00
Uncollectible bills.....	1,021.29	972.62	837.34	929.50	866.71	936.70
TOTAL EXPENSE.....	\$5,101.71	\$4,913.93	\$7,891.62	\$5,647.41	\$8,324.33	\$11,432.51
Taxes.....	\$7,410.95	\$10,515.88	\$10,944.64	\$17,202.64	\$10,666.44	\$20,455.62
TOTAL OPERATING EXPENSES.....	\$137,630.16	\$148,785.13	\$158,883.12	\$178,024.13	\$160,747.47	\$191,028.21
NET EARNINGS WITHOUT ALLOWANCE FOR DE- PRECIATION.....	\$77,078.91	\$84,531.94	\$82,973.66	\$93,994.99	\$93,458.79	\$82,047.57

* Denotes debit.

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The evidence indicates that its safety is well recognized. That the stock sells upon a 5 per cent. basis has already been noted. It is also significant that the contract between the Manchester company and the respondent, which contains a provision under which the respondent may purchase for \$1,000,000, expressly provides that the option shall not be exercised in such a way as to relieve the respondent from paying \$32,500 per annum during the entire term of the contract.

At the time this contract was made the properties did not represent an investment of anything approaching \$1,000,000. The outside value claimed by anybody at that time, so far as the evidence discloses, was not more than \$600,000. And yet the stockholders felt so certain that the property would earn the rental and build up that value to \$1,000,000, that they preferred the rental, with the promise of the property or \$1,000,000 at the end of the contract period, to \$1,000,000 in cash at any time during the term of the contract.

In considering what is a fair rate of return some regard must be paid to the fact that the legal rate of interest in this State is but 6 per cent. and that money is freely offered on good real estate loans for 5 per cent. We are satisfied that if the Manchester gas properties were capitalized at their fair value, and the dividend limited to 6 per cent., the stock would sell at par or better.

In any rate case it is impossible so to fix the rate as to provide an exact percentage of return to capital. The only purpose of making any finding as to value, or any finding as to fair rate of return, is so that by the application of the one to the other an amount may be obtained which may be considered as marking the point below which the net profits from the operation of the property in question must not be carried by any reduction made.

In the *Haverhill Gas* case, cited above, the Massachusetts Commission held that a rate yielding less than 6 per cent. upon the value of the property would not be confiscatory in Haverhill, under facts very similar to the facts in

this case. If the fact that property has in part been built up out of surplus earnings, in addition to the payment of a full return to stockholders, may be taken into consideration in fixing the rate, then we find that in this case a rate yielding a return less than 6 per cent. would not be confiscatory. There is, however, sufficient doubt upon this point, so that, wishing to steer clear of any danger of infringing the respondent's constitutional rights, we fix \$54,000, or 6 per cent. upon \$900,000, as the amount below which we shall in no event reduce the respondent's net revenue, after making reasonable allowance for depreciation. And we find \$54,000 to be a fair return upon the full value of all the properties devoted to the public use by the respondent in connection with its gas business in Manchester.

Earnings Under Reduced Rate.

It can be learned from the foregoing tables that if the price of gas had been \$1.00 instead of \$1.10, assuming the same expense and the same output, the net income during the period covered by the tables would have been as follows:

TABLE SHOWING WHAT RESPONDENT WOULD HAVE EARNED
AT \$1.00 RATE.

1909	\$59,745
1910	65,111
1911	62,796
1912 (year ending June 30)	72,555
1912 (year ending December 31)	71,834
1913 (year ending June 30)	59,310

If the net income shown were wholly available for returns on capital, it would be ample to pay a fair return upon the value of the properties used, but some reservation should doubtless have been made in each year for depreciation. What the amount should have been we do not know, because we do not know to what extent depreciation was actually taken care of by charges made to operating expenses for discarded or renewed units of property.

To the extent that such charges were made, the setting up of a depreciation reserve will increase the net earnings available for depreciation and return on capital.

Depreciation Reserve.

The respondent's evidence as to the amount which should be set aside for a depreciation reserve, and the brief of counsel upon that point, appear to be based upon the assumption that the respondent is now without a depreciation reserve, and that one should be suddenly built up. We have already considered that question, and have held that by its additions to plant built up out of surplus earnings, it has made very complete provision against depreciation. But, if the fact were otherwise, the only depreciation which the consumers in the future can be asked to make good is the depreciation which accrues in the future; the rates in the past have been quite sufficient to pay a full return on capital, and cover accruing depreciation. If the stockholders had not provided against depreciation by making additions to plant value, the burden of restoring the property would properly fall on them and not on the consumers through excessive depreciation charges. The suggestion that a depreciation fund should be suddenly built up by large depreciation reserve charges is inconsistent with the respondent's argument that accrued depreciation is a matter of indifference to the consumers because the stockholders must bear the burden of restoring or replacing depreciated units.

We think the evidence of Mr. McClellan on Pages 95 to 104 of the record is more relevant to the amount of depreciation reserve required than any other testimony in the case, except the testimony of the engineers as to the amount of depreciation which they find to have accrued with respect to each unit of property, taken in connection with such evidence as is before us as to the age of such units.

Upon all the evidence we think it is apparent that the depreciation of the Manchester gas properties is not rapid,

and that an annual reservation considerably more modest than that suggested by the respondent would meet the necessities of the case.

SHOULD A REDUCED RATE BE ORDERED?

Upon a consideration of all the facts which we have above set forth, we are of the opinion that the net earnings shown to have been received by the respondent prior to 1912 could not be held an excessive return upon \$900,000, which we have fixed as the base upon which its return is to be reckoned. In that year, however, (ending either June 30 or December 31) the volume of business had become such that a decrease to the \$1.00 rate might have been made, and the respondent still have received a fair return, after setting aside a reasonable amount for depreciation. In the year 1913 the volume of business continued to increase, but the net profits fell to the level of the years immediately preceding 1912. It, therefore, becomes immediately important to learn the cause of the increased operating charges of 1913, and to determine whether the same were abnormal, or may reasonably be expected to continue.

Abnormal Expenses of 1913.

The increase appears to be fully accounted for by the following items: an increase in taxes of about \$10,000; an increase in the "Accident and Damage" item of about \$6,000; a charge against operation for "Abandoned Mains" of \$2,400; about \$1,800 paid in increased salaries, being one-half of an increase in salaries of officers and others made January 1, 1913. A portion of these items must continue to be met hereafter; the rest are abnormal.

The most important item is that of taxes. The creation of the State Tax Commission in 1911 resulted in an increase in the assessment on the respondent's properties which practically doubled its taxes. In 1913 the respondent paid a tax which amounted to 9 cents per 1,000 feet upon all gas which it sold. Its properties, all told, are appraised at \$1,159,879. This includes some unused prop-

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erty, not considered in our appraisal, but still the tax appraisal is much in excess of the value which we have found. It is probable that, in making such appraisal, the assessing board gave special weight to the earning capacity of the property at rates then in force. It is not unreasonable to assume that any reduction in the rate will result in a reduction in the assessment, particularly if the respondent shall present to the assessors all of the information bearing on value made available by this investigation and contained in this report. It is not our province to determine what the assessment of the respondent's properties ought to be for the purposes of taxation, but in making allowance for future taxation we do not think we should assume that the properties devoted to public use will be appraised in excess of \$900,000, which we have placed as the limit of their value. The tax rate in Manchester last year was .0153; if the rate this year does not exceed .0155 the tax on \$900,000 will be a little less than \$14,000, or about \$6,000 less than in 1913. Of course, whatever tax is necessarily paid must be provided for in the rates collected by the respondent, and if experience shall prove that it is required to pay a larger tax than we now assume, and by reason of that fact its net earnings under efficient operation are brought below a sum sufficient to pay a fair return on the value of the properties operated, application may be made for a change in the rate fixed in this proceeding.

The average amount paid annually for accidents and damage during the period covered by the foregoing tables was \$2,150; last year the amount was \$7,228. Of this, \$5,000 was paid to one person. It would seem reasonable to expect that the average annual amount paid hereafter will not be more than \$3,000, leaving about \$4,000 of the 1913 expense which should not be regarded as permanent.

The salary increase is undoubtedly permanent, and in place of \$1,800 paid from January 1, 1913, to June 30, 1913, the full sum of \$3,600 will have to be met in each full year hereafter.

The abandoned street mains items will not appear in operating expenses hereafter, as a proper depreciation ac-

count will be set up. The failure to carry such an account in the past has operated unduly to swell the respondent's operating expense, because when units of the respondent's plant have been discarded or renewed the entire first cost of any such unit in the case of abandonment, or the entire cost of renewal in the case of renewal, has been charged to operating expense in the year in which the expense was incurred. For example,—in the latter part of 1911 and early part of 1912 the steel container in one of the respondent's holders was renewed at a cost of \$10,345.43 and was charged to operating expense in those years, \$1,286.64 in 1910 and \$9,058.79 in 1911. Such charges as these make the operating expense for the year in which they occur disproportionately large. They should accordingly be charged to a depreciation account, and thereby spread over several years.

We are not able, upon the evidence now before us, to determine what proportion of the total amount charged as operating expense is in fact of such a nature that it should have been charged to depreciation, but that charges to operation will be substantially reduced by setting up a depreciation account is certain.

Increased Cost of Oil and Coal.

It is claimed by the respondent that operating expense will be considerably increased in the future by reason of an advance in the price of oil. In 1913 the respondent paid for oil 2.96 cents per gallon, whereas it is now paying 5.125 cents per gallon. Last year the consumption of oil amounted to 764,072 gallons. If the same amount of oil were used this year as last, the resulting increase in expense by reason of the advance would be \$16,542.

The price now paid, however, will probably not be permanent. The record shows that in 1907 the price was 4.5 cents per gallon, and that the price has since varied between that point and the low price of last year. But even if the price now paid were permanent, the respondent ought to be able by careful management to avoid a large part of the suggested increase. Mr. McClellan testified that the propor-

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tion of coal gas manufactured could be increased, and the effect of the advance in the cost of oil thereby diminished, though he said he had not made a sufficient study so that he could judge to what extent.

There was some evidence to the effect that the output of the respondent could not be manufactured without considerable additional investment in new apparatus. The present capacity of the coal gas machinery operated by the respondent is between 700,000 and 800,000 cubic feet per day. The average amount of both water and coal gas made in 1913 was 663,000 cubic feet per day. The maximum output in any one day was 940,000 cubic feet. While the coal gas machinery cannot be depended upon for its maximum output on every day in the year, yet it will meet the ordinary demand.

It was also claimed at the hearing that coal gas of standard quality, 600 B. T. U., could not be made without enriching. It is now admitted that the desired standard can be obtained, but it is claimed that the yield will be so far limited that such manufacture is not economical.

Upon this point Mr. McClellan, through counsel, has filed with us certain data which we have considered as supplementary to his testimony. He refers to an address delivered before the Indiana Gas Association by Mr. J. C. Silverthorn, Superintendent of the Public Utilities Company of Evansville, Indiana, on "*Yields of Gas from Coal as Related to B. T. U.*" Mr. Silverthorn assumes five cubic feet per pound of coal to be a normal yield. He gives the average results for the year ending June 30, 1911, of seventeen plants operating in Wisconsin, showing the average yield per pound of coal to be 4.84 cubic feet, and the average heating value 600 B. T. U. A reference to the 1911 report of the Wisconsin Commission, from which Mr. Silverthorn's statistics were taken, shows, however, that most of the seventeen plants were utilities having a small output. Taking the seven coal gas plants in Wisconsin having an output of over fifty million cubic feet, the average yield was 4.978 feet per pound of coal. At the Racine plant, which in output

rather closely corresponds to the respondent's plant, the average yield was 4.99 per pound. There is other evidence tending to show that approximately five cubic feet of 600 B. T. U. gas can be produced per pound of coal.

It is undoubtedly true that if the fullest possible yield is secured from coal carbonized, the respondent will find it necessary to enrich its coal gas. Still, upon all of the evidence, we find that the proportion of coal gas used can be increased, and the effect of the advance in the price of oil thereby largely obviated. There is also evidence that an advance in the transportation rate for coal of five cents per ton from Portsmouth to Manchester is to be expected. This will increase the cost of such coal gas as is manufactured by about one-half cent per thousand feet.

DISCOUNT FOR PROMPT PAYMENT.

The present rate schedules of the respondent contain no provision granting a discount for prompt payment. In 1891 its rate was \$1.70 with \$0.30 discount for prompt payment; in 1898 it was reduced to \$1.40, with \$0.15 discount, and in 1907 to \$1.10, with no discount.

It is now testified that the result of the abandonment of the discount feature has been bad; that accounts come in slowly, and that the expense for collection has materially increased, amounting in the year ending December 31, 1913, to over \$3,000. It is estimated that one-half of this expense would be saved by a discount for prompt payment, and we are asked to authorize a discount provision.

Such provisions are common in the rate schedules of public utilities in the several parts of the State. Inspection shows that they are found in the schedules of all coal or water gas companies with two other exceptions.

Is it lawful to make a distinction in rates between the consumer who pays promptly and the one who does not? There is no statutory inhibition against such distinction unless it is found in Section 4 of the Public Service Commission Act, which provides that "All charges made or demanded * * * by any public utility * * * shall be just and

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reasonable * * *. Every charge that is unjust or unreasonable * * * is prohibited." The distinction, then, is lawful unless it is unjust or unreasonable.

The respondent is entitled to receive payment for service rendered by it, and to receive such payment promptly. If it does not, any loss or expense resulting therefrom actually affects the public as well as the public utility, since whatever expense is entailed upon the respondent must come from money collected in rates; and what the respondent reasonably may charge for service depends in large part upon the expense which it must meet.

It is obvious, therefore, that the interest of the public and the interest of the utility will be subserved by a rule which will facilitate the prompt payment to the utility of bills from consumers, as the same fall due.

This being true, if the discount rule applies to all customers equally, so that each may secure the lower rate merely by paying his bill promptly, as it is his duty to pay it, we do not see that it can in any sense be considered "unjust or unreasonable." Accordingly we hold that any utility may provide in its rate schedules for a discount for prompt payment. A sufficient number of days should be allowed, within which it may be taken advantage of, so that customers may have a fair opportunity to pay at the lower rate, and the discount should be reasonable in amount so that a failure, inadvertently or otherwise, to pay within the time limited by the rule will not be followed by an increase in the amount to be paid disproportionate to any possible inconvenience which may accrue to the utility in consequence of the delay.

This question was very fully considered by the Wisconsin Commission in *Berend v. Wisconsin Telephone Company*,* 4 W. R. C. Rep. 150, where, after reviewing the court decisions of several States bearing thereon, the Commission reached a like conclusion.

* I Commission Telephone Cases 411.— Ed.

MINIMUM BILL.

The respondent asks also to be permitted to provide in its rate schedule for a minimum meter charge of \$0.50 per month.

It is claimed that many consumers connected with the respondent's mains use so little gas that, instead of making any contribution towards a return upon the plant investment, they are a source of actual loss to the respondent.

If gas were delivered to the consumer at the holder, and paid for upon delivery, it might perhaps be said that it cost no more per unit to supply the small consumer than the large. To make delivery to the consumers, however, mains must be laid through the streets, service pipes must be laid connecting these mains with the premises of consumers, and meters must be put in to measure the gas supplied. Even if the mains are regarded as a part of the general plant, the burden of carrying which may fairly be imposed upon the general public in proportion to the gas which they use, yet the service pipe and the meter are investments made for the accommodation of particular premises, and a sufficient profit must be made upon the business done with those premises to pay interest, depreciation and taxes upon those investments, or there will be a loss to the utility on account of that connection.

So also in large degree the volume of the general expenditures of the utility, aside from manufacturing, depend rather upon the number of consumers served than upon the quantity of gas sold. Each month each customer's meter must be read, his consumption reported to the office, a proper charge made therefor, a bill rendered and collected, and the proper credit given; employees must also be kept to attend to complaints made by consumers; from time to time meters must be inspected; current repairs must be made to meters and services; and many other expenditures must be incurred which are ordinarily designated as "consumer costs" because said to depend upon the number of consumers rather than upon the volume of output. In

short, each consumer requires the opening of a separate business account upon the books of the utility, and requires each month a portion of the time of a considerable number of persons employed in various capacities by the utility.

These consumer costs amount in the aggregate to a very large sum annually, and an equitable proportion of the same must be paid by each consumer, in addition to interest and depreciation on his meter and service pipe, or he will be served at a loss to the utility, which must in turn be made up by other rate payers.

The following table has been prepared showing the gas sales in Manchester for the year ending November 30, 1913:

ANALYSIS OF GAS SALES.

Year Ending November 30, 1913.

Meter reading	Bills	Consumption	Cumulative	Per cent. of consumption	Per cent. of bills
0	7,522	.....	.....	.....	5.8
100	3,275	327.5	327.5	.14	2.5
200	4,119	823.8	1,151.3	.50	3.1
300	4,570	1,371.0	2,522.3	1.10	3.5
400	5,228	2,091.2	4,613.5	2.01	4.0
500	5,591	2,795.5	7,409.0	3.23	4.3
600—1,000	30,955	25,125.4	32,534.4	14.20	23.8
1,000—2,000	38,156	56,507.2	89,041.6	38.88	29.3
2,100—3,000	16,114	30,885.8	128,927.4	56.30	12.4
3,100—4,000	6,553	22,804.5	151,731.9	66.25	5.0
4,100—5,000	2,995	13,454.5	165,186.4	72.13	2.3
5,100—10,000	3,867	25,868.7	191,055.1	83.43	2.9
10,100—20,000	932	12,651.7	203,706.8	88.95	.71
20,100—30,000	202	4,870.2	208,577.0	91.08	.15
30,100—40,000	96	3,286.7	211,863.7	92.51	.07
40,100—50,000	19	825.1	212,688.8	92.87	.01
<i>Amoskeag Mills:</i>					
1912, December	1	1,787.1	214,475.9	7.13	
1913, January	1	1,903.1	216,379.0		
1913, February	1	1,496.7	217,875.7		
1913, March	1	1,471.6	219,347.3		
1913, April	1	1,306.5	220,653.8		
1913, May	1	1,284.0	221,937.8		
1913, June	1	1,194.1	223,131.9		
1913, July	1	1,111.6	224,243.5		
1913, August	1	909.7	225,153.2		
1913, September	1	1,167.7	226,320.9		
1913, October	1	1,413.9	227,734.8		
1913, November	1	1,357.9	229,092.7		

While it would be erroneous to assume that none of the meters showing very low consumption in any month showed sufficiently large consumption in other months to render the connections remunerative, it is undoubtedly true that the respondent is supplying gas to a large number of consumers whose use of the service is so slight that they pay less

than the cost of supplying such service. Respondent's counsel, in their brief, claim that the minimum cost of carrying each consumer, without making any allowance for gas used, is sixty-seven cents per month.

This result is reached by figuring interest and depreciation and taxes upon meter and service values, upon 33 per cent. of street main value, and upon 25.6 per cent. of office equipment value, and interest and taxes upon 25.6 per cent. of working capital, and by assessing also upon each meter its *pro rata* share of the following expenses,—all of “ complaint,” “ distribution office,” “ gratuitous work,” “ repairs services,” “ repairs meters,” “ setting and removing meters,” and “ collections,” 50 per cent. of “ distribution,” 33 per cent. of “ repairs mains ” and “ street mains abandoned,” 18 per cent. of “ expense ” and “ new business,” and 85 per cent. of “ other commercial expense.”

The percentages used are said to have been adopted from a case determined by the Wisconsin Commission, and the items of plant value used are those testified to by Mr. McClellan, with a proportional part of the \$240,000 claimed for going value added.

Less values than those testified to by Mr. McClellan would be used in working out the problem, as the result of our finding as to value; but no changes in the items used would sufficiently change the result to bring the minimum obtained as the result of the computation below fifty cents per month, if the same percentages were to be used and were to be applied to the same items. Whether that should be done is accordingly the question to be considered.

It is by no means easy to determine just what expenses should be regarded as consumer costs for the particular purpose of fixing a minimum meter charge. If all costs incident to the distribution of gas from the holder to the individual consumers, and to the collection of pay therefor, including all general expenses incident to the relations between the utility and its patrons, or incident to attempts to facilitate distribution by securing new patrons, were to be regarded as consumer costs for such purpose, and assessed

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pro rata upon meters in service, it would result in a minimum bill which would be prohibitive to many consumers desiring a very limited service.

It would not benefit the utility to cut off all such consumers. Many of the costs mentioned are incident to any distribution of gas, and must continue to be met regardless of whether the consumers are many or few. The loss of any consumer is injurious to the utility if that consumer yields a sufficient revenue to pay a little more than the expense which his particular connection with the utility causes. It would seem, therefore, that in fixing a minimum bill, in such a case as this, the aim should be to fix such an amount as will assure the utility against loss by reason of the connection of any consumer, assuming the utility in existence as a manufacturer and distributor of gas, with its mains in the streets ready to meet the demand of those desiring gas service.

Irrespective of the very small consumers, the plant would have come thus into existence, and the utility would have had to meet in large part the same costs incident to the business of distribution which it now meets. If the very small consumers were cut off, it would still be subject to those costs. They are costs incident to the gas business, and only in that sense can the small consumer be said, in some part, to cause the same.

This is recognized by inference at least in the respondent's computation. Only one-third of the investment in mains is charged against consumers in the respondent's computation, and 18 per cent. of new business. Other percentages have been noted. It would be manifestly unfair to charge against the small consumer as much of the mains investment as against the consumer who uses them many times more than he. But all of the apportionments are arbitrary, and the only reason for taking any percentage less than one hundred in respect to some of them seems to be to avoid arriving at a minimum charge which would be so unreasonably high as to discourage the connection of small consumers.

Any computation for the purpose of determining the minimum cost of each meter connection must contain more or less of such arbitrary assumptions, unless all costs incident to the business of distribution are included. But it would seem, as before stated, that if the minimum bill is computed to cover merely those costs which may be said to vary largely with the number of consumers, it would assure the utility against loss caused by the taking on of consumers, and yet make gas service available to the greatest number possible, which we believe to be good public policy.

The computations shown in the tables printed below have been made with that end in view.

Table I shows the reproduction cost of meters in service, as taken from the Sloan, Huddle, Feustel and Freeman inventory.

Table II shows the taxes, depreciation and interest on such meters and the service pipes connected therewith, the total reproduction cost of all services, as shown by said inventory, being distributed to the meters in service. The average cost of the service connection to each meter is thus found to be \$6.40. Taxes are computed at the 1913 rate; depreciation at 4 per cent. upon the meters and 2 per cent. upon the service pipes; interest is computed at 6 per cent.

Table III shows the proportion of various classes of operating charges which we have thought should fairly be assessed upon the meters *pro rata* for the purpose of fixing minimum charges. In this table the items for "repairs services," "repairs meters," and "setting and removing meters" have been taken at the average amount for four and one-half years prior to June 30, 1913. The "expense collection" item has been taken at \$1,500, the respondent having offered evidence that the item would be reduced to that amount if discount for prompt payment were provided in the rate schedule.

It will be noted that while in the computation of fixed charges the varying investment in the various sizes of meters has been recognized, it is impossible to adopt a similar basis of distributing other costs which should be pro-

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vided for in the minimum charge, although such costs undoubtedly vary to some extent. It is believed, however, that an equal distribution of such other costs among all the meters in service is not unfair. Accordingly, the uniform consumer charge of 12.2 cents per meter, shown by Table II, has been added to the varying fixed charges shown by Table III to arrive at the total cost per meter per month of the various sizes. Such total cost is shown by Table IV.

TABLE I.

SHOWING COST OF METERS IN SERVICE.

<i>Size of meters</i>	<i>Number of meters</i>	<i>Cost per meter</i>	<i>Total cost</i>
3 light	3,100	\$6.75	\$20,925.00
5 light	7,662	7.99	61,220.00
10 light	368	10.12	3,725.00
20 light	82	14.50	1,189.00
30 light	84	19.04	1,650.00
45 light	9	29.19	263.00
50 light	43	32.08	1,379.00
60 light	5	37.33	187.00
80 light	6	51.08	306.00
100 light	30	58.90	1,767.00
150 light	7	88.45	619.00
200 light	1	116.65	117.00
250 light	1	149.95	150.00
	<u>11,398</u>		<u>\$93,497.00</u>

TABLE II.

SHOWING CONSUMER FIXED CHARGES.

<i>Size of meter</i>	TAXES		DEPRECIATION		INTEREST		<i>Total cost</i>	<i>Monthly cost</i>
	<i>Meters</i>	<i>Services</i>	<i>Meters</i>	<i>Services</i>	<i>Meters</i>	<i>Services</i>		
3 light	\$0.114	\$0.108	\$0.27	\$0.128	\$0.405	\$0.384	\$1.409	\$0.117
5 light	.135	.108	.319	.128	.479	.384	1.553	.129
10 light	.172	.108	.405	.128	.607	.384	1.804	.149
20 light	.246	.108	.58	.128	.87	.384	2.316	.193
30 light	.333	.108	.785	.128	1.178	.384	2.916	.243
45 light	.495	.108	1.17	.128	1.751	.384	4.036	.336
50 light	.534	.108	1.283	.128	1.924	.384	4.361	.363
60 light	.633	.108	1.493	.128	2.239	.384	4.985	.415
80 light	.879	.108	2.043	.128	3.064	.384	6.606	.550
100 light	1.00	.108	2.356	.128	3.534	.384	7.51	.626
150 light	1.50	.108	3.538	.128	5.457	.384	11.115	.926
200 light	1.98	.108	4.666	.128	7.00	.384	14.266	1.189
250 light	2.54	.108	6.00	.128	8.997	.384	18.157	1.513

TABLE III.

SHOWING OPERATING CONSUMER COSTS.

<i>Account</i>	<i>Per cent. of whole</i>	<i>Amount year ending June 30, 1913</i>
<i>Distribution:</i>		
Distribution	25	\$677.77
Complaint expense	50	731.00
Distribution office expense	50	477.25
Gratuitous work	50	1,451.37
Repairs mains .....	...	...
Repairs services	100	1,987.45
Repairs meters	100	3,502.08
Setting and removing meters	100	2,432.77
Street mains abandoned .....	...	...
TOTAL		\$11,259.69
<i>Commercial:</i>		
Commercial expense	100	\$762.00
Expense collection	100	1,500.00
Expense office	15	773.37
Office salaries	15	1,511.03
Uncollectible bills	100	936.70
TOTAL		5,483.10
		<u>\$16,742.79</u>

TABLE IV.

SHOWING TOTAL CONSUMER COSTS.

<i>Size of meter</i>	<i>Fixed charges</i>	<i>Other consumer cost's</i>	<i>Total charges</i>
3 light	.117	.122	.239
5 light	.129	.122	.251
10 light	.149	.122	.271
20 light	.193	.122	.315
30 light	.243	.122	.365
45 light	.336	.122	.458
50 light	.363	.122	.485
60 light	.415	.122	.537
80 light	.550	.122	.672
100 light	.626	.122	.748
150 light	.926	.122	1.048
200 light	1.189	.122	1.311
250 light	1.513	.122	1.635

It would appear that the amounts indicated in Table IV above would make an adequate minimum charge in respect to each class of meters, were no use whatever made of gas, but if they were adopted the amounts paid thereunder would not suffice to pay any portion of the output cost for gas actually used through the meters upon which minimum charges were paid. Either the minimum bill must be made sufficiently large to cover the use of gas through meters affected by the minimum bill, or the utilities must charge for gas used in addition to the minimum charge. This latter course is not deemed practicable. Accordingly, we have aimed to construct a schedule of minimum charges which shall recognize

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the varying investment in meters and services, and shall be sufficient to pay the consumer costs shown in the above tables, and to pay as well for the average quantity of gas used by meters affected by the minimum.

In making this schedule we have carefully considered all available data which would throw any light upon the quantity of gas used monthly by the consumers who will be affected by the minimum, and we have considered also the fact that many of the smaller meters are shown to be in tenement house blocks and in office buildings, so that the investment in service connections is somewhat less than the amount used in making the computation in Table III.

It is recognized that by strict reasoning it can be shown that some part of the return on working capital, and some part of other costs not included in the computations above shown, ought, as between the consumers, to be provided for in the minimum bill; but on the other hand, interest, depreciation and taxes have been computed on the cost of reproduction new of meters and services, instead of upon the present value thereof.

We are satisfied that the schedule of minimum charges set forth below will protect the respondent against loss, and that it is as equitable as between the consumers as any that can be devised. It does not vary greatly from similar schedules fixed in various cases by the Wisconsin Commission, except that the minimum for meters of greater capacity than twenty lights is not carried above the twenty light minimum. This is because actual experience, as shown by the testimony of respondent's manager, proves that a minimum charge for the larger meters is not necessary. See *Racine v. Racine Gas Light Company*, 6 W. R. C. Rep. 313; *Neenah v. Wisconsin Light, Heat and Power Company*, 7 W. R. C. Rep. 492; *Application La Crosse Gas and Electric Company*, 8 W. R. C. Rep. 201; *Meyer et al. v. Sheboygan Gas Light Company*, 9 W. R. C. Rep. 467.

The respondent may adopt a schedule of minimum monthly meter charges as indicated by the following table, which charges we find to be just and reasonable.

TABLE OF MINIMUM METER CHARGES.

<i>Size of meter</i>	<i>Monthly minimum charge</i>
3 light meter	} \$0.30
5 light meter	
10 light meter . . . . .	.40
20 light meter and over . . . . .	.50

The adoption of this schedule of minimum charges will have the effect of reducing somewhat the respondent's operating expense, and will produce a reasonable increase in revenue from a class of consumers who have heretofore paid less than it has cost to serve them.

THE EFFECT OF RATE REDUCTION ON OUTPUT.

It is reasonably to be expected that a reduction in rate will operate to increase the respondent's output to a considerable extent. The output was decreasing in the two years prior to the reduction in rate made in 1899, but from that time it increased. The increase in recent years has been marked. This should doubtless in part be attributed to growth in the population of Manchester, and in part to the fact that the use of gas is changing, and that it is coming to be used more largely for cooking and other domestic uses, as distinguished from lighting. That a reduction in price will encourage these new uses would seem not doubtful. In view of the steady and large increase in the past, under the present rate, we think it may be safely assumed that under a lower rate very substantial further increases in output may be made.

FINAL CONCLUSION.

We find that the respondent's present flat rate of \$1.10 per thousand cubic feet is unjust and unreasonable, and that a just and reasonable maximum net rate for gas in the city of Manchester does not exceed \$1.00 per thousand cubic feet. At this rate we find that the earnings of the respondent's properties will be sufficient to pay all operating expenses, provide for depreciation, and give a net return on

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the capital invested of somewhat more than \$54,000 annually. At a rate of \$0.90, or even \$0.95 per thousand cubic feet, we fear that a net return of \$54,000 could not be earned.

An order will issue requiring the respondent to establish said net rate, the same to be in effect after July 1, 1914. For the purpose of establishing a discount for prompt payment, however, the respondent will be permitted to bill all gas consumed at a gross rate of \$1.10 per thousand cubic feet, but each consumer shall be allowed a discount of \$0.10 per thousand feet if payment is made within such number of days after his bill falls due, not less than ten, as the respondent may by rule allow.

NILES and WORTHEN, *Commissioners*, concurred.

ORDER No. 315.

Upon the foregoing report, which is made a part hereof,

It is ordered, That the People's Gas Light Company, a public utility operating a gas plant in the city of Manchester, shall not collect any greater net rate or charge for gas supplied subsequent to June 30, 1914, than \$1.00 per thousand cubic feet, which said rate is hereby determined and fixed as the maximum net rate to be charged in said city by said public utility; *provided, however*, that said public utility may bill all gas consumed at a rate of \$1.10 per thousand cubic feet, and may demand and collect that rate, unless payment therefor shall be made within such number of days after payment becomes due, not less than ten, as said public utility, by rule to be approved by this Commission, shall allow; and, *provided further*, that said public utility may establish a schedule of monthly minimum meter charges of thirty cents per month for three and five light meters, forty cents per month for ten light meters, and fifty cents per month for meters of twenty light capacity and upwards, and may collect from any consumer served the monthly minimum applicable to such consumer's meter, for any month in which

the bill for gas used through said meter, at the net rate fixed by this order, would otherwise be less than said minimum,

And it is further ordered, That any rule providing for the billing of gas at \$1.10 per thousand cubic feet with a discount for prompt payment to the net rate fixed by this order, shall be filed with and approved by this Commission before the same shall take effect, and that until such rule shall be so filed and approved, said public utility shall not demand or collect from any consumer any rate or charge for gas supplied subsequent to June 30, 1914, in excess of said net rate;

And it is further ordered, That no minimum charge allowed hereby shall be demanded or collected until this order shall have taken effect, and until said public utility shall have amended its rate schedule on file with this Commission to conform thereto;

And it is further ordered, That this order shall take effect on July 1, 1914, and shall continue in force until suspended, modified or set aside by this Commission, or until the same shall cease to be in effect by limitation of law.

By order of the Public Service Commission, this tenth day of June, 1914.

OHIO.

The Public Utilities Commission.

THE UNION LAUNDRY, M. P. KLINE, MANAGER AND OWNER,
MANSFIELD, OHIO, *v.* THE MANSFIELD GAS LIGHT COM-
PANY, A PUBLIC SERVICE CORPORATION, DOING BUSINESS
IN MANSFIELD, RICHLAND COUNTY, OHIO.

P. S. C. No. 570.

Dated June 12, 1914.

Previous Order Rescinded upon Rehearing.

ORDER.

This case* came on for rehearing upon defendant's application, and the same was reheard, and it appearing from newly discovered evidence introduced at this rehearing that complainant is using gas for domestic purposes in connection with his use of gas for power purposes.

It is, therefore, ordered, That the order* entered herein on the fourteenth day of October, 1913, be and the same is hereby, rescinded, revoked and held for naught.

Dated at Columbus, Ohio, this twelfth day of June, 1914.

IN THE MATTER OF THE APPEAL OF THE BUCYRUS LIGHT AND
POWER COMPANY FROM AN ORDINANCE PASSED BY THE
CITY OF BUCYRUS, ESTABLISHING THE RATES TO BE
CHARGED FOR ELECTRIC CURRENT FURNISHED FOR LIGHT-
ING AND POWER PURPOSES IN SAID CITY OF BUCYRUS.

P. S. C. No. 590.

Dated June 23, 1914.

Valuation Fixed by Commission Made Final.

ORDER.

The Commission having completed the valuation of the property of the Bucyrus Light and Power Company,† and

* The order in this case, dated October 14, 1913, was printed in Commission Leaflet No. 24, at page 653.— Ed.

† The Commission's findings as to the value of the property are printed in Commission Leaflet No. 31, at page 246.— Ed.

notice stating the valuations placed upon the several kinds and classes of property of said company and upon the property of said company as a whole, having, on the fifteenth day of May, 1914, been given to said company and to the city of Bucyrus by registered letter; and said the Bucyrus Light and Power Company having on the thirteenth day of June, 1914, filed its protest against such valuations; and the Commission having fixed the twenty-third day of June, 1914, as the time for hearing said protest and for considering at such hearing any matter material thereto presented by said company in support of its protest or by any representative of the public against such protest; and this case having this day come on for hearing upon said protest and said company having failed to offer any matter, material or otherwise, in support of said protest; and the Commission being of the opinion that its inventory is complete and accurate and its valuation correct, therefore,

It is ordered, That the valuation placed by the Commission upon the several kinds and classes of property of said the Bucyrus Light and Power Company and upon the property of said company as a whole, be and the same are hereby, made final.

It is further ordered, That the further hearing of this case be, and it is hereby adjourned, to Wednesday, the first day of July, 1914, at 10 o'clock A. M. in the hearing room of the Commission, third floor, New First National Bank Building, Columbus, Ohio.

Dated at Columbus, Ohio, this twenty-third day of June, 1914.

PENNSYLVANIA.

The Public Service Commission.

In re PETITION OF THE CONSOLIDATED WATER COMPANY FOR
PROCESS TO PREVENT THE BOROUGH OF COUDERSPORT
FROM CONSTRUCTING AND OPERATING A WATER PLANT IN
SAID BOROUGH WITHOUT OBTAINING THE APPROVAL OF
THE COMMISSION.

Application Docket No. 11.

Submitted February 3, 1914 — Decided April 22, 1914.

**Public Convenience and Necessity — Approval of Commission Necessary to
Construction of Waterworks Plant by Municipality.**

Held: That inasmuch as the Borough of Coudersport had not secured from the Commissioner of Health of the Commonwealth a permit for the construction of a waterworks plant, certain other steps looking toward such construction were of no avail to place the borough in the position of having a waterworks plant "by authority of law, in process of construction" at the time when the Public Service Company Law became effective, and, consequently, before proceeding to construct such a plant, the borough must obtain the approval of the Commission.*

* Editor's syllabus.

WISCONSIN.

Railroad Commission.

In re APPLICATION OF THE GILMANTON MILL AND ELECTRIC PLANT FOR AUTHORITY TO INCREASE RATES.

No. U—289.

Decided March 16, 1914.

Increase in Rates—Hours of Service—Flat Rate and Meter Service—Cost of Installation of Meters.

The Gilmanton Mill and Electric Plant applies (1) for authority to increase its rates by the adoption of such a schedule as the Commission may deem reasonable and just, and (2) to be relieved from the necessity of supplying meters free of cost to consumers, until such time as the financial condition of the utility will permit it to own and furnish meters. The utility furnishes continuous service, except for a few hours each day when a storage battery used in connection with a hydraulic generator is being charged, and it appears that some of the flat rate consumers permit their lamps to remain turned on at all times. All consumers on a metered basis have furnished their own meters. Accurate records of the operating expense of the plant are not available.

Held: 1. Before the present rates are revised more experience in the operation of the utility should be obtained to show what business may be secured and at what cost.

2. In view of the uncertainty as to whether the revenues resulting from the present rates will be adequate to meet the needs of the plant it is not advisable to require the utility to increase its investment by acquiring meters in use or by furnishing those to be installed in the future.

3. The utility is entitled to have a rule limiting the use of lamps on a flat rate to a reasonable use.

It is ordered: (1) That such part of the case as relates to a higher rate for service be dismissed for the present; (2) that the utility be exempted from the necessity of supplying meters at its own expense; (3) that rules regulating the use of all night lights and flat irons in line with the views expressed in the opinion may be filed with the Commission for approval; (4) that after such rules have been filed and approved the utility may require violators of the rules to install meters at their own expense; (5) that the utility may require all parties using electric fans or other power devices to install meters at their own expense.*

* Syllabus of the Commission.

American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York City

COMMISSION LEAFLET No. 33

**Recent Commission Orders, Rulings and Decisions
from the following States:**

Arizona	Mississippi
California	Missouri
Connecticut	Nebraska
Idaho	New York
Illinois	Oklahoma
Kansas	Oregon
Louisiana	Pennsylvania
Massachusetts	South Dakota
Michigan	Wisconsin
and	
Canada	

SEPTEMBER 1, 1914.

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PART I.
COMMISSION ORDERS, RULINGS AND DECISIONS
DIRECTLY AFFECTING TELEPHONE AND
TELEGRAPH COMPANIES.

CALIFORNIA.

Railroad Commission.

QUINCY CHAMBER OF COMMERCE *v.* THE WESTERN UNION
TELEGRAPH COMPANY.

Case No. 378—Decision No. 1600.

Decided June 22, 1914.

Adequate Facilities — Telephoning Telegrams.

Upon complaint asking the Commission to take the necessary steps to secure improved telegraph facilities for Quincy, it appeared that The Western Union Telegraph Company had no office in Quincy, that said town was without telegraph communication with the outside world, except over the line of the California and Oregon Telephone Company by way of Susanville and Reno, causing the payment by the people of Quincy of a double toll for telegraph service, that the defendant had refused to construct and maintain a telegraph line into Quincy. Subsequent to the filing of the complaint, the defendant made arrangements with the Quincy Western Railway Company to transmit telegraph messages by telephone between Quincy and Marston, thereby bringing about a reduction of 50 per cent. in the rate theretofore charged for telegraph service. Still later, the telephone line between Quincy and Marston was reconstructed and converted into a metallic circuit, and by a re-arrangement of the railroad station at Quincy and by the removal of telephones formerly connected with the line between Quincy and Marston, greater privacy was given to messages sent over the telephone to the defendant's Marston office.

Held: That the service thus given is adequate and satisfactory.*

SUPPLEMENTAL OPINION AND ORDER.

ESHLEMAN and LOVELAND, *Commissioners:*

The complaint in this case was filed on March 23, 1913, and thereafter a public hearing was held by the Commis-

* Editor's headnote.

sion in the town of Quincy on May 27, 1913. The complaint alleged that the defendant, The Western Union Telegraph Company, had no office in Quincy, that the town was without telegraph service with the outside world except over the line of the California and Oregon Telegraph Company by way of Susanville and Reno, and that the people of Quincy were subjected to a double toll over that line to Reno and thence over the Western Union lines. The complaint prays that the defendant be required to establish an office in Quincy and to construct a line thence to Marston, a distance of approximately four or five miles, for connection at that point with the defendant's transcontinental lines.

The Quincy Western Railway Company operates a railroad between Quincy and Marston, and, in connection with this railroad, it also owned and operated a grounded telephone line between these points. Subsequent to the filing of this complaint, the defendant arranged with the railroad company to transmit telegrams by telephone between Quincy and Marston over this telephone line, these messages to be transferred at Marston to and from the Western Union lines to destination. The efficiency and adequacy of this service was attacked on the ground that it was subject to interruption and lack of privacy due to the presence of certain telephones which were connected at intermediate points to this line, and to the fact that the telephone in use for this purpose in the railway company's office in Quincy was located in an open room which was accessible to the public and, therefore, without privacy.

The defendant admitted these allegations to be true, and agreed to install a sound proof booth in the railway company's office at Quincy to insure privacy at that point, and, in conjunction with the railway company, to reconstruct the line between Quincy and Marston, but objected to maintaining a separate office in the town on the grounds that the available revenue was insufficient to justify the expense incidental to the operation of an independent agency.

In view of the facts disclosed at the hearing, it did not appear that The Western Union Telegraph Company should

be required to establish an agency at this point, but it was apparent that the service should be improved. On June 5, 1913, the Commission rendered its decision permitting the defendant to make the improvements which it had volunteered to make and provided thereafter for an inspection to be made by the Commission, and if these improvements were found to be adequate and satisfactory the complaint should be dismissed; but, if not, that an order be entered requiring such improvements in addition to those voluntarily made as the Commission should find necessary.

On March 30, 1914, the defendant notified the Commission that the telephone line between Quincy and Marston had been reconstructed and removed from the highway, which it formerly occupied, to the railway company's right of way and that the railway company had reconstructed and enlarged its Quincy office, which latter improvement the defendant considers obviates the necessity for the installation of a sound proof booth. The Commission is, therefore, asked to make the inspection and to dismiss the complaint.

An inspection was accordingly made by the Commission's telephone expert, and it was found that the telephone line referred to has been substantially rebuilt, and that by stringing an additional wire it has been converted into a metallic circuit. Service over this line is now free from interruption since the stations formerly connected between Quincy and Marston have been removed, and transmission is also satisfactory. It was also found that the railway company has provided a public waiting room, apart from that in which the telephone is located, and since the public no longer has access to the room from which messages are telephoned, privacy no longer requires that a booth be installed. It is also apparent that, as the railway company's agent acts also as agent for the telegraph company, it is possible to render better service to both companies without the use of a booth.

The complainant, however, has objected to a dismissal of the complaint, giving, as a reason for this objection, that

a representative of the telegraph company had promised that telegraph instruments would be installed and used in place of the telephone in transmitting messages and that, therefore, it should be required either to do this or to place the booth. Notwithstanding this protest of complainant, it is not apparent that adequacy of service requires the installation either of telegraph instruments or of a booth, but, on the contrary, it appears that the defendant, in conjunction with the railway company, having made these improvements, has done all that it can be reasonably required under the circumstances to do to meet present requirements.

The following order is, therefore, recommended :

ORDER.

Complaint having been filed with this Commission by the Quincy Chamber of Commerce of Quincy, Plumas County, California, complainant, *v.* The Western Union Telegraph Company, a public utility corporation, defendant, alleging that the defendant company has no office in the town of Quincy; that the said town is without telegraph communication with the outside world save and except over the line of the California and Oregon Telegraph Company by way of Susanville and Reno, subjecting the people of Quincy to a double toll for telegraph service; that the defendant company has refused to construct and maintain a telegraph line into Quincy, and asking that the Commission take such steps as may be necessary to secure for the people of Quincy improved telegraph facilities; and a public hearing having been held thereon, and the defendant, The Western Union Telegraph Company, having arranged with the Quincy Western Railway Company to transmit telegraph messages by telephone between Quincy and Marston, thereby bringing about a reduction of 50 per cent. in the rate theretofore charged for telegraph service; and certain other improvements having been made in the telephone line between Quincy and Marston and in the railway company's office at Quincy, as more specifically referred to in the opinion accompanying this order; and an inspection

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having been made as provided in the Commission's Decision No. 702 heretofore rendered on June 5, 1913; and the improvements herein referred to having been found to be adequate and satisfactory,

It is hereby ordered, That the complaint herein be, and it hereby is, dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-second day of June, 1914.

REEDLEY TELEPHONE COMPANY v. L. O. CLOUGH, J. E. ANDERSON, G. E. SCHROEDER, ANTON HANSON AND J. W. GALLE.

Case No. 603 — Decision No. 1612.

Decided June 26, 1914.

Rate for Telephone Station Connected with Farm Line but Located within Exchange Radius.

Held: That the telephone station of the defendant Clough is situated within the city limits of Reedley within the exchange radius, and should be required to pay the regular rates for exchange service though connected with a farmer line.*

APPEARANCES:

- 1. *Terkel*, for Reedley Telephone Company.
- C. W. Tackaberry*, for defendants.

REPORT.

GORDON, *Commissioner:*

Reedley Telephone Company, the complainant in this case, operates a telephone system in the city of Reedley, Fresno County, California, and furnishes exchange service to subscribers within the municipal limits of Reedley, and also to a number of farmer lines which extend beyond the

* Editor's headnote.

municipal limits. The rate for exchange service within the municipal limits is \$1.50 per month. The rate for farmer line service is \$3.60 per annum.

G. E. Schroeder and J. W. Galle, who live beyond the exchange limits, are served by a farmer line. After this line enters the exchange limits it passes across the property of J. E. Anderson, which property is now leased to L. O. Clough. This line also crosses the property of Anton Hanson within the exchange limits.

The only issue presented in this case is whether L. O. Clough should be allowed to receive exchange service on this line at the farmer line rate of \$3.60 per annum, or whether he should be required to pay the rate of \$1.50 per month regularly charged for telephone service furnished within the exchange limits. The telephone company has refused to furnish telephone service to Mr. Clough unless he pays the regular exchange rate and has filed this complaint asking for a ruling of the Commission upon this question; and, further, in case the Commission holds that Mr. Clough should pay the \$1.50 per month rate, that an order be made directing Mr. Clough to disconnect his farmer line station unless this rate is paid, and in the event he fails to do so, that the company be permitted to disconnect the entire farmer line.

I desire to draw attention to the circumstances surrounding the construction and use of this farmer line, as I believe this will have an important bearing upon the decision in this case. This farmer line was constructed about the year 1908 at the expense of six persons owning property in the vicinity of Reedley who desired to have telephone service between themselves and also a connection with the exchange at Reedley, formerly owned by The Pacific Telephone and Telegraph Company. One of these parties, Mr. J. S. Miller, owned the property now occupied by Mr. Clough. Mr. Miller received telephone service upon these premises, as did also the other parties on the farmer line. In November, 1912, Mr. Miller sold this property to Mr. J. E. Anderson. At the time of the transfer no

mention was made of the telephone line or of the telephone service. The premises remained idle for several months, at the end of which time they were rented to Mr. Roher. During Mr. Roher's tenancy, which was for a period slightly over a month, the telephone, by some means, became disconnected. After Mr. Roher vacated the premises they were again idle for a period of two months, after which they were occupied a short while by Mr. Boyd. The answer to the complaint states that Mr. Boyd requested that the telephone be connected, although no testimony was introduced at the hearing upon this point. After Mr. Boyd left the premises they remained idle until about February 1, 1914, at which time they were rented by Mr. Clough, the present occupant. Shortly after Mr. Clough moved on to the premises he requested telephone service and was refused for the reasons mentioned above, and the dispute resulting in the present complaint thus arose.

At the hearing in this case I made a very careful examination of the history of the telephone service on these premises and found that, with the exception of the request which was stated to have been made by Mr. Boyd, no mention was made of telephone service upon these premises during the seventeen months in which the various transfers were made. In view of the peculiar circumstances of this case I do not believe that Mr. Clough can be regarded by this Commission as being in the same position as Mr. Miller, who originally owned these premises, and contributed to the construction of this farmer line. Mr. Clough, without any mention being made of telephone service, moved on to these premises which are situated within the exchange limits. No farmer line service had been furnished to these premises for a period well over a year, although they had been occupied from time to time by different tenants. I feel that Mr. Clough cannot be regarded differently than any other tenant who rents premises within the city of Reedley. I feel that it would be decidedly unfair to permit Mr. Clough to receive regular exchange service at other than the regular exchange rates. I, accordingly, recom-

mend that the Commission make a ruling that the Reedley Telephone Company shall charge for telephone service for the premises now occupied by Mr. Clough at the regular exchange rate of \$1.50 per month.

Reedley Telephone Company also requested that this Commission make an order requiring Mr. Clough to disconnect his telephone station at these premises unless he would pay the \$1.50 per month rate, and further, that in case Mr. Clough refused to disconnect his telephone station, the company be permitted to disconnect the entire farmer line. I do not feel that it is necessary at this time to make an order as requested by the telephone company. I feel that the decision upon the just rate to be charged will settle the present controversy. If, however, action by this Commission is deemed necessary, another complaint may be filed with the Commission.

I recommend the following order:

ORDER.

The above entitled case having been heard and the Commission being duly advised in the premises,

It is hereby ordered, That the rate to be charged by Reedley Telephone Company for regular telephone exchange service furnished to the premises within the city of Reedley, now owned by J. E. Anderson and occupied by L. O. Clough, is the regular exchange rate of \$1.50 per month.

It is further ordered, That in all other respects the complaint in this proceeding be, and the same is hereby, dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-sixth day of June, 1914.

ILLINOIS.

State Public Utilities Commission.

E. W. HIGHT, ASSUMPTION, ILLINOIS, v. ASSUMPTION TELEPHONE COMPANY AND ASSUMPTION MUTUAL TELEPHONE COMPANY.

No. 2332.

Decided July 2, 1914.

Refusal of Commission to Establish Single Telephone System in Place of Two Established Competing Systems.

ORDER.

This case came on for hearing before the Commission on June 30, 1914, at Springfield, Illinois. This complaint sets forth that two telephone companies, the Assumption Telephone Company and the Assumption Mutual Telephone Company, have been conducting telephone systems in the city of Assumption and vicinity since January, 1904; the complaint further states that great inconvenience and unnecessary costs to the community follow as a result of this fact.

The petition prays that the Commission shall take action to bring about an adjustment of affairs and so apportion the business and the territory between the two companies that the city of Assumption and vicinity may be given relief in the establishment of a single telephone system.

While the Commission is of the opinion that the public interest demands that but one telephone system should operate in each community, in the present case both companies have been in existence and operation since 1904, and the Commission is of the opinion that it cannot grant the relief prayed for by the petitioner.

It is, therefore, ordered, That the complaint be dismissed.

By order of the Commission this second day of July, A. D. 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE AUTOMATIC HOME TELEPHONE COMPANY AND CHATSWORTH TELEPHONE COMPANY FOR APPROVAL OF CONTRACT TO OPERATE THEIR LINES IN CONNECTION WITH EACH OTHER.

No. 2462.

Decided July 17, 1914.

Voluntary Physical Connection of Telephone Lines Approved.

ORDER.

A joint petition having been filed in the above entitled matter by the Automatic Home Telephone Company of Pontiac, Illinois, and the Chatsworth Telephone Company of Chatsworth, Illinois, duly signed by the president and attested by the secretary of the respective companies, asking that an order be entered by the Commission consenting to and approving a certain contract between these two companies dated March 25, 1914, to connect and operate their telephone lines jointly, and the matter having been heard the Commission finds:

That both petitioning companies are public utilities; that all of the material matters set forth in the petition are true and correct, and that the terms of the contract between said companies for the joint operation of their lines are reasonable, just and lawful; that public convenience and necessity demand and require a physical connection of the lines of the petitioning companies for the conveyance of messages or conversation by telephone, and the Commission being fully advised in the matter,

It is ordered, That the contract between the petitioning companies, the Automatic Home Telephone Company of Pontiac, Illinois, and the Chatsworth Telephone Company of Chatsworth, Illinois, dated March 25, 1914, which provides for the connection and joint operation of said peti-

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tioning companies' lines, be, and the same is hereby, approved.

By order of the Commission this seventeenth day of July, 1914.

Dated at Springfield, Illinois.*

IN THE MATTER OF THE APPLICATION OF FARMERS' MUTUAL
TELEPHONE COMPANY OF SANDWICH, ILLINOIS, FOR AU-
THORITY TO CHANGE RATES.

No. 2634.

Decided July 17, 1914.

**Elimination of Discrimination between Stockholders and Non-stockholders
— Increase in Rates to Stockholders.**

ORDER.

Application in this matter was filed with the Commission on June 15, 1914, and sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in the villages of Sandwich, Sheridan and Waterman, with its principal place of business in Sandwich, and that, as such public utility, it is subject to the provisions of an act entitled "*An act to provide for the regulation of public utilities.*" Application further sets forth that the rates charged stockholders for all classes of service are less than the rates charged non-stockholders and application is made for authority to change the rates charged the stockholders in order that there may be no discrimination in the rates as applied to stockholders and non-stockholders.

* Similar orders were issued in the *Matter of the Application of the Automatic Home Telephone Company and the Saunemin Telephone Company, for Approval of Contract to Operate Their Lines in Connection with Each Other*; No. 2463; July 17, 1914; and in the *Matter of the Application of the Automatic Home Telephone Company and Cullom Mutual Telephone Company for Approval of Contract to Operate Their Lines in Connection with Each Other*; No. 2464; July 17, 1914.—Ed.

In accordance with the ruling of this Commission, that it is unlawful to exact higher rates from subscribers who are not stockholders, directors and officers of a public utility than from subscribers who are stockholders, directors and officers, that the subscriber who is a stockholder has no rights or privileges which are denied to a subscriber who is not a stockholder and that the stockholder must look to the profits of the business for his return on his investment;

It is, therefore, ordered, That the discriminatory rates and charges as applied to stockholders and as set forth in the application of the petitioner, Farmers' Telephone Company, shall be discontinued from and after the thirty-first day of July, 1914, and that said company shall post and publish the aforesaid change in charges as provided by Section 34 of "An act to provide for the regulation of public utilities."

By order of the Commission this seventeenth day of July, A. D. 1914.

Dated at Springfield, Illinois.*

IN THE MATTER OF THE APPLICATION OF THE ELIZABETHTOWN
MUTUAL TELEPHONE COMPANY OF ELIZABETHTOWN, ILLI-
NOIS, FOR AUTHORITY TO CHANGE RATES.

No. 2636.

Decided July 17, 1914.

**Elimination of Discrimination between Stockholders and Non-stockholders
— Reduction of Rate to Non-stockholders.**

ORDER.

Application in this matter was filed with the Commission on June 16, 1914, and sets forth that the petitioner is

* Similar orders were issued upon applications by the following companies, the orders in each instance being dated July 17, 1914:

Dorchester Telephone Company of Dorchester, Illinois, No. 2659.

The Sailor Springs Telephone Company, No. 2700.— Ed.

a public utility engaged in the management and operation of a telephone system in the village of Elizabethtown, Hardin County, Illinois, and that as such public utility it is subject to the provisions of an act entitled "*An act to provide for the regulation of public utilities.*" Application further sets forth that the rates now in force and effect are discriminatory in that the rate charged subscribers who are non-stockholders is higher than the rate charged subscribers who are stockholders, for the same class of service. Application is made for authority to change the rate charged non-stockholders in order that the same rate may be applied to all subscribers for the same class of service without discrimination.

The proposed change in the rate charged subscribers who are non-stockholders is in effect a reduction in rates and in accordance with the ruling of this Commission that it is unlawful to exact higher rates from subscribers who are not stockholders, directors and officers of a public utility than from subscribers who are stockholders, directors and officers; that the subscriber who is a stockholder has no rights or privileges which are denied to a subscriber who is not a stockholder, and that the stockholder must look to the profits of the business for his return on his investment.

It is, therefore, ordered, That the discriminatory rates and charges as applied to stockholders and as set forth in the application of the petitioner, Elizabethtown Mutual Telephone Company, shall be discontinued from and after the thirty-first day of July, 1914, and that said company shall post and publish the aforesaid change in charges as provided by Section 34 of "An act to provide for the regulation of public utilities."

By order of the Commission this seventeenth day of July, A. D. 1914.

Dated at Springfield, Illinois.*

* Similar orders were issued upon applications by the following companies, the order in each instance being dated July 17, 1914:

Sigel Mutual Telephone Company, Sigel, Illinois, No. 2655.

Kilbuck Telephone Company, Monroe Center, Illinois, No. 2721.—Ed.

IN THE MATTER OF THE APPLICATION OF THE LERNA MUTUAL
TELEPHONE COMPANY OF LERNA, ILLINOIS, FOR AUTHORITY
TO CHANGE RATES.

No. 2657.

Decided July 17, 1914.

**Elimination of Discrimination between Stockholders and Non-stockholders
— Increase in Rates to Stockholders — Reduction of
Rates to Non-stockholders.**

ORDER.

The petition filed herein by The Lerna Mutual Telephone Company, which operates a telephone system in the village of Lerna, Coles County, Illinois, and vicinity, asks for authority to change its rates so as to eliminate discrimination between the rates charged stockholders and non-stockholders.

The petition sets forth that the rate charged subscribers and stockholders for all classes of service is \$6.00 per year and that the rate charged subscribers who are not stockholders is \$9.00 per year. The petitioner seeks authority to change its rates so as to charge all subscribers \$7.50 per year in order to discontinue the present discrimination in rates. Such change is in effect a reduction on the rate charged subscribers who are not stockholders and a slight increase on the rate being charged stockholders.

In accordance with the ruling of this Commission that it is unlawful to exact a higher rate from subscribers who are not stockholders, directors and officers of a public utility than from subscribers who are stockholders, directors or officers, the action of this company in abolishing discrimination and in providing the same rate for stockholders as for non-stockholders, is a lawful and proper change and meets with the approval of this Commission.

It is, therefore, ordered, That the rate of \$7.50 per annum which the petitioner seeks to charge both stockholders and

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non-stockholders be, and the same hereby is, approved; said rate to take effect from and after the first day of August, 1914, and that the above change in rates shall be filed and published as provided by Section 34 of "*An act to provide for the regulation of public utilities.*"

By order of the Commission this seventeenth day of July, 1914.

Dated at Springfield, Illinois.

KANSAS.

Public Utilities Commission.

IN THE MATTER OF THE COMPLAINT OF THE MUTUAL CONSOLIDATED RURAL TELEPHONE LINES OF CEDARVALE, KANSAS, *v.* THE MISSOURI AND KANSAS TELEPHONE COMPANY.

Docket No. 832.

Decided July 9, 1914.

Legal Rates under Public Utilities Law — Rural Switching Rate — Rental for Telephone Sets — “ Pin Space ” Rental — Inadequate Service.

Held: That under the Public Utilities Law the legal rates to be charged by the respondent at its exchange at Cedarvale, Kansas, were \$3.00 per telephone per annum for switching service and \$3.00 per annum as rental for telephone sets, those being the rates fixed by the lowest schedule of rates for the same services on the first day of January, 1911, the effective date of the Public Utilities Act;

That the Commission will not consider the question of charge for “ pin space ” as such matters must of necessity be arranged between the parties in interest in a mutually satisfactory manner by contract;

That the complaint as to inefficient service is not well founded.*

APPEARANCES:

W. H. Sproul, counsel for complainant.

John L. Hunt, counsel for respondent.

OPINION.

KINKEL, Commissioner:

The complainant in this case is an incorporation of certain rural telephone lines of the vicinity of Cedarvale, Kansas, and in its complaint alleges:

First: “ Overcharges against the rural patrons of \$1.00 per telephone per annum from January 1, 1911, to the present time.”

* Editor's headnote.

Second: "Overcharges against rural patrons of 5 cents per pole per annum for 'pin space' from January 1, 1912, to the present time."

Third: "The service of said company is incomplete, insufficient and unsatisfactory to the patrons of said company."

Fourth: "The charges for service to customers are not uniform; and vary from \$2.00 to \$5.00 per annum, per customer for the same service."

And prays that the respondent be ordered:

First: To reduce charges specified in Paragraphs 1 and 2.

Second: To repair their lines and instruments in such manner as to make the service sufficient.

Third: To require the company to fix and maintain a uniform rate for 'phone rental so each customer shall pay a fixed rate per annum for such service.

The charges referred to in Paragraph 1 are included in the consideration of the question of annual rental of telephone sets.

The question of charge for "pin space" was not considered for the reason that it has been held by the Commission that such matters must of necessity be arranged between interested parties in a mutually satisfactory manner through contract arrangement.

In short, the whole controversy resolves itself into two propositions. First, quality of service. Second, rate of rental for telephone sets.

The testimony shows that the complainant owns its own lines and equipment up to the city limits of Cedarvale, Kansas, with the exception of telephone sets, which are rented from the respondent.

The contract between the parties hereto provides that in case a telephone set is out of repair, it is necessary for the patron to deliver the same to the office of the respondent company where it will be repaired free of charge. No testimony was offered showing that the respondent had ever refused or failed to repair any telephone set. It was shown

by preponderance of evidence that the service rendered on the part of the respondent was generally satisfactory, and that whenever a condition arose where the service was insufficient, it was usually due to defects in the lines of the complainants, whose duty it is to keep up and maintain the same.

Under these circumstances it must be found that the complaint as to inefficient service is not well founded.

The real controversy in this case is as to the legality of the rate of rental for telephone sets, which is at present being charged by the respondent company.

The testimony shows that during the years 1906 and 1907, the respondent company entered into a written contract with a number of patrons, for a five year period, agreeing to furnish switching service at Cedarvale, Kansas, and a telephone set at the rate of \$5.00 per annum. Later on, a new rate schedule was published by respondent, effective January 1, 1908, providing for a charge of \$3.00 per annum switching fee and \$3.00 per annum rental for telephone set.

Again, further rate schedule for rural switching service at Cedarvale, Kansas, exchange was published, effective April 1, 1909, which contained same rates effective in cases where five or more subscribers were attached to any one line, which is the case at Cedarvale, Kansas.

It was also shown that on lines where five year contracts had been entered into during the years 1906 and 1907, when new subscribers were taken on to the line, such subscribers were given contracts to expire at the same time that the said original contracts expired and the same charges were made, with the view of making a uniform charge to all subscribers on the same line and avoid discrimination on such line.

All new lines attached to the switchboard of respondent were charged at rates hereinbefore referred to and made effective January 1, 1908, and April 1, 1909.

Some time during the early part of the year 1914, the respondent company attempted to increase its telephone set rental to \$5.00 per annum without first having secured

the consent of this Commission, but upon the statement of this Commission that such increase could not go into effect without its consent, the rate was promptly withdrawn and all money collected under the new rate was tendered and refunded to parties paying the same.

So the real question to be decided is, what is the legal rate of rental for telephone sets at the present time? Section 30, Chapter 238, Laws of 1911, which is a portion of the law creating this Commission, and commonly known as the "Public Utility Law," reads as follows:

Rates of January 1, 1911, to be rate. "Unless the Commission shall otherwise order, it shall be unlawful for any common carrier or public utility governed by the provisions of this act within this State to demand, collect or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same services on the first day of January, 1911."

The Commission feels that any conclusions reached in this case must be based upon the analysis of the section quoted, and particularly upon the word "schedule." The word "schedule" originally meant a strip of papyrus; later a leaf or piece of paper, a written or printed list or a catalogue. So it would seem from this definition as laid down by Webster, that a schedule was the written list of rates in existence on January 1, 1911.

In this case, the "schedule" hereinbefore referred to would seem to be the lowest schedule of rates published by the respondent and in force on January 1, 1911.

After a careful study of the testimony in this case and of the exhibits submitted and introduced at the time of the hearing, the Commission finds: that the legal rate at the present time to be charged by the respondent at its exchange at Cedarvale, Kansas, is \$3.00 per telephone per annum for switching services and \$3.00 per annum rental for telephone set, and an order will be issued accordingly.

ORDER.

July 10, 1914.

This case being at issue upon complaint and answer filed, and having been duly heard and submitted by the

parties, and investigation of the matters and things involved having been had on June 26, 1914, and the Commission having on the ninth day of July, 1914, made and filed its report containing its findings of fact and conclusions thereon,

It is now, therefore, ordered, That the legal rate at the present time to be charged by The Missouri and Kansas Telephone Company at its exchange at Cedarvale, Kansas, for switching rural lines and for rental of telephone sets, be, and is, as follows, to wit:

Switching fee, rural line, \$3.00 per telephone per annum, with five or more subscribers attached to any one line.

Rental for telephone set, \$3.00 per set per annum.

It is further ordered, That the complaint herein referred to, as far as it relates to matters other than the rate of switching fee and rental for telephone sets, be, and the same is hereby, dismissed without prejudice.

Dated at Topeka, Kansas, this tenth day of July, 1914.

IN THE MATTER OF THE APPLICATION OF THE EMPORIA TELEPHONE COMPANY TO CHANGE ITS RATE FOR FOUR-PARTY SELECTED SERVICE IN THE CITY OF EMPORIA.

Docket No. 742.

Decided July 23, 1914.

Increase in Party Line Rates Denied — Disapproval of Agreement between City and Telephone Company — Total Operating Revenues and Expenses to be Considered in Determining Sufficiency of Any Particular Rate.

Upon application for authority to increase rates for four-party line service from \$1.00 to \$1.25 per month, it appeared that the applicant and the city of Emporia had entered into an agreement whereby the applicant should pay to the city \$100 per month for five years in lieu of any pole rental tax or tax for the use and occupation of the streets of the city, in consideration of which the city agreed not to oppose an increase in four-party line rates from \$1.00 to \$1.25 per month. It further appeared that should the Commission not approve the increase in rates the agreement would thereupon be void.

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The Commission found that the tax under the agreement would be borne eventually by the telephone subscribers, that the necessity for raising additional funds to carry out the contemplated contract had prompted the filing of a petition and that the provisions of the contract were unreasonable.

Held: That the evidence submitted on the question of permitting the applicant to increase the four-party rate to \$1.25 was insufficient.

The Commission, therefore, refused to approve the petition for increased rates believing that if it did so the four-party line subscribers alone would be compelled to pay this unreasonable tax.*

APPEARANCES:

J. L. Hunt and Hamer and Ganse, counsel for petitioner.

H. O. Caster, attorney for Public Utilities Commission.

OPINION.

KINKEL, *Commissioner*:

The petition in this case alleges that The Emporia Telephone Company operates a telephone exchange in the city of Emporia, Lyon County, Kansas, together with other exchange and toll lines; that its present rate for four-party selective service is \$1.00 per month; that the rate is not compensatory and is not sufficient to pay the cost of rendering selective service; and that the whole schedule of rates of said company is insufficient to pay a reasonable return upon the investment necessarily made by said company in its property, used and useful in furnishing telephone service in the city of Emporia, and prays that it be permitted to file with the Commission and to enforce a rate for four-party selective service of \$1.25 per month.

It is to be noted that the one question before the Commission is that of permitting the petitioner to file, and to enforce, a rate for four-party selective service of \$1.25 per month. Much testimony was taken at the time of hearings had on this petition, yet practically none of it was of such a character as to be of much assistance in reaching a conclusion in this case.

There is a very wide difference between the statements made by witnesses for petitioner and the telephone engi-

* Editor's headnote.

neer of this Commission, in reference to the excess in initial cost to install equipment employed by the petitioner, over the cost of the so-called individual line plant; the latter's statement being a positive declaration that the actual difference in the initial cost referred to was only \$647. This statement was never challenged, therefore petitioner's testimony and estimates in reference to additional cost on this item will not be further considered.

The accountant of this Commission attempted to verify the testimony of witnesses in reference to certain items of maintenance, depreciation, cost of services and similar expenditures, by an examination of petitioner's books; but owing to the system of bookkeeping employed it was found impossible to ascertain and tabulate these several items of expense as related to the four-party line service in question, and therefore the result of any comparison made by anyone along this line will necessarily be on some arbitrary basis chosen solely for the purpose of making such comparison.

In view of these facts there can be no conclusion reached, other than that statements of all witnesses are, of a necessity, based on arbitrary assumptions, and, for rate making purposes, do not furnish the best evidence.

For example, testimony was offered showing the average length of residence party lines to be 5,261 circuit feet; the average length of individual lines to be 2,213 circuit feet; that the investment for outside construction per average length line, four-party service, amounted to \$78.12 and for individual line \$33.40. No formula was given for, or in explanation of, these conclusions.

It would seem much fairer to ascertain the average length of lines of this plant, by dividing the total number of circuit feet, as shown by the last report of this company, by the number of its lines reported; and by doing this we find the average length per line in circuit feet to be only 3,714 feet. Likewise, in the matter of ascertaining the investment per line, it is not clear how the various items of cost in connection with a telephone line, can be allocated

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to proper accounts pertaining to any one service, when there are many services being furnished on the same pole lead and even through the same cable. Again referring to the last report of petitioner, we find that a value is placed on its exchange lines. Dividing this sum by the number of lines then in use, we have the sum of \$45.57, which would seem to be a fair average investment per line, of all classes of service, and which sum varies very materially from the testimony offered in this case.

It is impossible to fix rates for any given class of service, based on testimony such as is presented in this case. The Commission believes it to be impossible to fix rates on any given class of service, without taking into consideration the entire operation and value of the plant, which has not been done in this case. For the purpose of showing the insufficiency of figures presented by petitioner we show results obtained on the basis hereinbefore suggested as to the average length and investment per line, to wit:

AVERAGE LENGTH AND INVESTMENT PER LINE.

	<i>Party</i>	<i>Individual</i>
Average length per line.....	3,714	3,714
Investment per line (outside construction).....	\$45 57	\$45 57
Investment per station.....	15 08	45 57
Income per line.....	3 02	2 10
Income per station.....	1 00	2 10
Feet of circuit per \$100 of return.....	1,296	1,768
Investment, outside construction per \$1.00 of monthly income	\$15 08	\$21 70

SUMMARY OF INVESTMENT.

Central office per line	\$14 30	\$12 05
Outside construction per line.....	45 57	45 57
Sub-station per line.....	40 67	13 00
TOTAL PER LINE.....	\$100 54	\$70 62
Total per station (3.02 per line on party lines)....	\$33 29	\$70 62
Income per month.....	1 00	2 10
Investment per \$1.00 of monthly income.....	33 29	33 62

From this summary, which is as fair as those presented by the petitioner, it is conclusively shown that the party line service requires practically the same amount of investment, per \$1.00 monthly income, as does the individual line, and, therefore, four-party line service rendered by the petitioner is as profitable as the average individual line service. In fact, this has always been a recognized result. The manufacturers of this class of equipment have always laid great stress on the fact that the installation of party line service requires less investment and was more profitable than individual line service.

If it were not for the general belief in this apparent fact, the party line service would never have been installed. It should be the desire of every telephone company to furnish the widest range of classification of service, and prices to be charged therefor, thereby enabling those desiring a cheaper service to secure it, and those desiring more prompt service to have opportunity to purchase same.

It is shown in the testimony that The Emporia Telephone Company is furnishing unusually efficient and sufficient service. This is commendable and shows conclusively that reasonably efficient and sufficient service can be furnished through party line service.

It is said by competent authority that residence telephones are used less than 3 per cent. of the time, and therefore it is evident that a patron who is not engaged in mercantile business can find this class of service satisfactory. On the other hand, it is a matter of common knowledge that four parties on a line very decidedly tend to slow down the service, and to anyone to whom time is any object, the service is not satisfactory and a larger sum should be paid for more exclusive service.

In addition to these facts, it has been repeatedly held by the courts, that the question as to whether or not the rate on any one given class of service is compensatory or not, is not the vital question.

It is a well established legal fact that the sufficiency of any rate of a utility should be governed by the amount of

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its total operating revenues and total legitimate expenditures. The reason for this rule is evident, when we consider the impossibility of reaching an equitable conclusion in a case such as the one before us, where there is a wide range of testimony, all of which must be based on arbitrary assumptions.

The testimony shows that this petitioner and the city of Emporia have been in a long and extended legal controversy, and there is introduced in evidence a copy of a signed stipulation between the contending parties, which recites, in part, that the pending suit in the District Court of Lyon County, Kansas, is to be dismissed with prejudice at the cost of defendant; that The Emporia Telephone Company agrees to pay to the city of Emporia the sum of \$100 per month, commencing on the first day of January, 1914, and continuing for a period of five years, which payment is to be in lieu of any pole rental tax, or any tax for the use and occupation by said company of the streets, alleys and public grounds of said city, during said period of five years; and it is also agreed that, in consideration of the foregoing, the rate of \$1.25 per month for party line service, which is asked for by the petitioner in this case, will not be contested by, or objected to by the said city of Emporia; and if the Public Utilities Commission shall not approve the said party rate of \$1.25 to become effective April 1, 1914, then this agreement shall in all respects forthwith cease and determine and be of no force or effect.

This Commission has repeatedly held that it is an administrative body, rather than a judicial one. It is an established principle of law that the city of Emporia has the legal right to assess pole rental tax, or tax for the use and occupation of its streets and alleys against The Emporia Telephone Company; but the courts have held that such a tax must be fair and reasonable.

It is the province of the court rather than of this Commission to pass upon the fairness and reasonableness of the payment of the sum of \$100 per month by this peti-

tioner to the city of Emporia, as provided for in the contract above referred to; and the Commission would much prefer not to express any opinion in the matter. However, since the approval of this Commission is a condition precedent to the operation and enforcement of the contract, it seems necessary to pass upon that question.

Any such tax, or similar expenditures out of the ordinary, paid by any telephone company, naturally and logically falls finally upon that portion of the public using the telephone service.

It is unquestionably true that any tax paid by a telephone company to a city greater than is borne by other property, adds just that much additional burden to the users of the telephone service.

The Commission feels that in this case the necessity for raising additional funds to carry out the contemplated contract, herein referred to, has prompted this petitioner to file this petition for increase of rates for this particular class of service. The provision of the contract, as to the payment of \$100 per month to the city of Emporia by the telephone company is not fair and reasonable. On the contrary it is an exorbitant sum, and the Commission will, therefore, not approve the petition for increased rates, believing if it did so that the four-party line subscribers alone will be compelled to pay this unreasonable tax.

The Commission has given this case its most careful consideration, and in view of the facts surrounding it and the conclusions herein reached, the application will be dismissed without prejudice, and an order will issue accordingly.

ORDER.

The petition in this case having been duly heard and submitted by the petitioner, and investigation of the matters and things involved having been had on April 2 and 3, 1914, and on June 20, 1914, and the Commission having

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this day made and filed its report containing its findings of fact and conclusions thereon,

It is now, therefore, ordered, That the application of The Emporia Telephone Company to change its rate for four-party selective service in the city of Emporia be, and it is hereby, dismissed without prejudice.

Dated at Topeka, Kansas, this twenty-third day of July, 1914.

LOUISIANA.

Railroad Commission.

CITIZENS OF FLORIEN *v.* THE WESTERN UNION TELEGRAPH
COMPANY.

Case No. 2160 — Order No. 1749.

Decided June 30, 1914.

Telephone — Telegraph Service as Substitute for Telegraph Office.

The Commission refused to require the re-establishment of a telegraph office at a point where the receipts were insufficient and messages could be telephoned.*

ORDER.

This case came on to be heard after due notice having been given to all interested parties.

The Commission's investigation showed that at present there is an arrangement whereby persons desiring to send telegraph messages from Florien may do so by telephoning their messages to Leesville, only a few miles distant. While this arrangement is not a perfect one, it has given fair satisfaction in many places and properly equipped and managed should prove satisfactory to the people of Florien.

Some months ago there existed a telegraph office at Florien, but the receipts did not justify its continuance and nothing developed at the hearing to indicate that the revenues of the office, if re-established, would justify its continuance. Under the circumstances the Commission cannot grant the application of petitioners.

It is, therefore, ordered, That the application be, and it is hereby, denied and the case dismissed.

Baton Rouge, Louisiana, June 30, 1914.

* Editor's headnote.

RAILROAD COMMISSION OF LOUISIANA v. MORGAN'S LOUISIANA
AND TEXAS RAILROAD AND STEAMSHIP COMPANY AND THE
WESTERN UNION TELEGRAPH COMPANY.

No. 2117.

Order No. 1753.

(Amending Order No. 1737.*)

Decided July 1, 1914.

Partial Suspension of Previous Order.

ORDER.

At a general session of the Railroad Commission of Louisiana, held in the office of the Commission, in the capitol building, at Baton Rouge, Louisiana, on July 1, 1914, present, *Chairman Taylor, Commissioners Bridges and Michel*, having under further consideration Order No. 1737,* issued May 26, 1914,

It was ordered, That, in so far as Order No. 1737, adopted May 26, 1914, requires The Western Union Telegraph Company, within fifteen days from its date, to re-open, operate and continue in operation thereafter, the telegraph office at Eola, Louisiana, the said order is hereby suspended until further notice.

That portion of the said Order No. 1737 requiring the Morgan's Louisiana and Texas Railroad and Steamship Company and The Western Union Telegraph Company to each forfeit and pay to the State of Louisiana the sum of \$100 for violating the provisions of Rule No. 81 of the Revised Rules and Regulations of the Railroad Commission of Louisiana by closing or discontinuing the telegraph office or station at Eola, Louisiana, without the consent of the Commission, shall remain in full force and effect.†

Baton Rouge, Louisiana, July 1, 1914.

* Noted in Commission Leaflet No. 31, at page 39.—Ed.

† A similar order was issued on July 29, 1914, in *Railroad Commission of Louisiana v. Louisiana Western Railroad Company and The Western Union Telegraph Company*, No. 2115. Order No. 1763. Amending Order No. 1736, printed in Commission Leaflet No. 31, at page 38.—Ed.

MASSACHUSETTS.

Public Service Commission.

IN THE MATTER OF ADVANCE NOTIFICATION TO TELEPHONE SUBSCRIBERS OF PROPOSED CHANGE OF NUMBERS.

Dated July 21, 1914.

Changes of Numbers on Party Lines.

MEMORANDUM.

From time to time changes of numbers on party lines are made necessary because of the rearrangement of circuits. At the request of the Public Service Commission the New England Telephone and Telegraph Company will hereafter give advance notice to all party line subscribers whose numbers are to be changed.

Where such changes are necessary, all things being equal as regards facilities, preference will be given to subscribers who have had the use of certain numbers for the longer period of time.

MICHIGAN.

Railroad Commission.

**IN THE MATTER OF THE APPLICATION OF THE UNITED HOME
TELEPHONE COMPANY FOR AUTHORITY TO DISCONTINUE
CERTAIN FREE SERVICE OVER THE LINES OF SAID COM-
PANY IN THE COUNTY OF MASON, STATE OF MICHIGAN.**

T—52.

Decided June 26, 1914.

**Elimination of Free Service between Exchanges within the County of
Mason Approved — Establishment of Standard Rate Charged by
the Michigan Independent Telephone and Traffic Asso-
ciation for Toll or Long Distance Service.**

APPEARANCE:

Thomas Bromley, Jr., representing United Home Telephone Company.

OPINION.

HEMANS, Commissioner:

Application was filed in the above entitled matter on the thirtieth day of March, 1914, praying for an order of the Commission authorizing the discontinuance of free service between the exchanges of said company in the county of Mason, State of Michigan. Proof of publication of a notice of the purpose of said company to discontinue such free service was filed on the third day of April, 1914, showing the publication of said notice in the *Ludington Daily News*, a newspaper of general circulation in the community served by the said telephone utility. Hearing was had in the regular order from which it appears that the United Home Telephone Company operates a telephone system with exchanges in the city of Ludington and villages of Scottville and Fountain in the county of Mason. These exchanges furnish telephone service to between fourteen hundred and fifteen hundred subscribers. The rates charged by the

company in the city of Ludington are \$30.00 for business, \$18.00 for individual line residence and \$12.00 for four-party selective residence. In Scottville the rate is \$20.00 for business and \$12.00 for residence telephones. At Fountain the business rate is \$15.00 and the farm line rate \$12.00. Scottville is nine miles and Fountain twenty-eight miles from Ludington. Up to the present time, the company has provided free service over all of its lines within the county of Mason. The evidence shows that they are at present employing four circuits between Scottville and Ludington and are handling an average of 440 calls per day between these two towns without compensation, a large portion of it being furnished to persons who are not even telephone subscribers. The extent of toll service to which the average telephone subscriber should be entitled for the regulation exchange rate paid is one difficult of determination in certain cases, especially in cases where the subscriber is directly connected with an exchange isolated in character and must have the use of what otherwise would be denominated a toll circuit for ordinary communications of community interest and necessity. Such cases bear more analogy to the separate exchanges within a given city but, generally speaking, more satisfactory conditions obtain where each part of telephone service, exchange and toll, bear their appropriate charge.

The average telephone subscriber has only occasional use for other than exchange service. It is the exceptional telephone user that makes use of the long distance or toll service to a material extent. By furnishing long distance service as an incident to the exchange service at a flat rate, the traffic upon the long distance circuits is unduly congested and the service rendered unsatisfactory while the burden of maintaining the long distance service is borne to as great an extent by those who use it least as by those who use it most.

It is the claim of the company that they are in need of additional revenue with which to meet costs of operation, depreciation and for the payment of a reasonable return

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upon the capital invested. The exchange rates are certainly not excessive, but before the Commission would listen to their increase, it would require the company to so adjust its rates that it would receive the full financial benefit of its long distance or toll facilities.

Because of these considerations, we are of the opinion that the United Home Telephone Company is justified in eliminating from its rates and schedules, so-called "free service" between its exchanges in the county of Mason, and substituting therefor the standard rate of charge for toll or long distance service now charged by the Michigan Independent Telephone and Traffic Association and by the companies affording toll or long distance service within this State.

An order to this effect will be entered.

ORDER.

Application was filed in the above entitled matter on the thirtieth day of March, A. D., 1914, together with proof of publication of a notice by said United Home Telephone Company in the *Ludington Daily News*, a newspaper of general circulation in the territory served by the said telephone utility, setting forth that on March 31, 1914, application would be made to this Commission for permission to discontinue certain free service over the lines of said company in the county of Mason, State of Michigan, and,

An order of hearing in pursuance to said application having been fixed for the ninth day of June, A. D., 1914, at 1.30 o'clock in the afternoon of said day, at the office of the Commission in the city of Lansing, and the said United Home Telephone Company having appeared at the time and place mentioned, by its general manager, Mr. Thomas Bromley, Jr., and no one appearing in behalf of the citizens of said county of Mason, the Commission proceeded to a hearing of said application, and,

This Commission having duly considered said application and the evidence offered in support thereof, by virtue of the authority vested in us by law,

Do hereby authorize, The said United Home Telephone Company to eliminate the so-called free service between its various exchanges within the county of Mason, State of Michigan, and to substitute therefor the standard rate of charge for toll or long distance service now charged by the Michigan Independent Telephone and Traffic Association and by companies affording long distance service within the State of Michigan.

Dated June 26, 1914.

IN THE MATTER OF THE APPLICATION OF THE CITIZENS' TELEPHONE COMPANY OF GRAND RAPIDS, MICHIGAN, FOR LEAVE TO INCREASE CERTAIN TELEPHONE RATES, RENTALS AND CHARGES IN THE VILLAGE OF CALEDONIA, MICHIGAN.

T—61.

Decided June 26, 1914.

Elimination of Combination Rates.

Upon application for authority to eliminate combination rates within applicant's Caledonia exchange, it appeared that a gross rate of \$20.00 for business service and of \$17.00 for residence service with a discount of \$2.00 in each case if the quarterly rental was paid promptly was in effect. It further appeared that certain subscribers had the lines of their residence and business telephones so bridged that a call through central was indicated at both places, and that for these combinations the company in the past had quoted a rate of \$15.00 net for business telephone and \$12.00 net for the residence telephone. Accordingly a subscriber who maintained a residence and a business telephone upon lines that were bridged obtained the same at a combined yearly rental of \$6.00 less than he would were the lines not bridged.

Held: That this discrimination is not justified, since the difference in the equipment required where lines are bridged and where they are not, is immaterial, the difference in investment being less than the annual difference in the rentals charged for the respective services.

The elimination of the combination rate was authorized and the substitution of the regular exchange rates for service or combination lines was ordered.*

* Editor's headnote.

APPEARANCE:

Mr. C. E. Tarte, general manager, Citizens' Telephone Company.

OPINION.

HEMANS, Commissioner:

Application was made in the above entitled matter for the elimination of so-called combination rates within the exchange of the Citizens' Telephone Company in the village of Caledonia and proof of publication of a notice as required by Section 10 of Act No. 206, Public Acts of 1913 has been filed. Notice of hearing upon said application was duly entered and a copy thereof mailed to the village president of the village of Caledonia, but upon the hearing no one appeared in opposition to the application.

It appears that the Citizens' Telephone Company have an exchange at Caledonia of something over 300 subscribers, approximately 100 being within the village. The rates applicable within the village, in accordance with the tariffs on file with this department, are, for business telephones \$20.00 per year gross and \$18.00 if quarterly rental is paid on or before the twentieth day of the first month of the quarter; residence telephones \$17.00 and \$15.00 if likewise paid quarterly in advance.

It appears that within this exchange there are 11 telephone subscribers who have the lines of their residence and business telephones so bridged that the call through the central is indicated at both telephones. There is also a limited number of telephones on party lines where the same condition obtains. For these combinations the company has, in the past, quoted a rate of \$15.00 net for the business telephone and \$12.00 net for the residence telephone, or the subscriber who maintained a residence and business telephone upon lines that were bridged obtained the same at a combined yearly rental of \$6.00 less than where the lines were not bridged.

The conditions do not justify this discrimination. The same equipment is required in the case where the lines are bridged as where they are not, with the exception that

where the lines are bridged, one drop and one jack serves the purpose of the two telephones as against two drops and jacks in the case of an individual line. This difference is immaterial, as an investment, it is less in its total amount than the yearly difference made in the rate. We think the company is justified in eliminating this rate. If the parties desire that the lines should be bridged so that the ring from central actuates the bells in both telephones, it should be treated as an accommodation to the patron and, perhaps, as a service to which he is entitled, but it should not be used as a basis for a price less than the standard rate filed by the company for service to telephones over individual lines.

The statute provides that all patrons shall pay like rates for like contemporaneous service. This provision of the law is not being observed when, under the guise of a party line rate, patrons are accorded individual line service.

An order in accordance with the foregoing will be entered.

ORDER.

Application was filed in the above entitled matter on the twenty-sixth day of May, A. D., 1914, together with proof of publication of notice by said Citizens' Telephone Company in the *Caledonia News*, a newspaper of general circulation in the territory served by the lines and facilities of said Citizens' Telephone Company in the village of Caledonia, setting forth that on the twenty-sixth day of May, 1914, application would be made to this Commission for permission to charge for service on combination lines the same rates charged for individual line service from and after the first day of July, 1914, said proposed rates being set forth in said notice, and,

An order of hearing in pursuance to said application having been fixed for the seventeenth day of June, A. D., 1914, at 11 o'clock in the forenoon of said day at the office of the Commission in the city of Lansing and notice having been mailed to the president of the village of Caledonia and the said Citizens' Telephone Company having appeared

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at the time and place mentioned, by its general manager, Mr. C. E. Tarte, and no one appearing in behalf of the citizens of the village of Caledonia, the Commission proceeded to a hearing of said application, and,

This Commission having duly considered said application and the evidence offered in support thereof, by virtue of the authority vested in us by law,

Do hereby authorize, The said Citizens' Telephone Company to publish and make effective as of the first day of July, A. D., 1914, the same charge for service on combination lines as are now in effect for individual line service, as follows:

	<i>Gross</i>	<i>Net</i>
Business telephones	\$20 00	\$18 00
Residence telephones	17 00	15 00
	<u> </u>	<u> </u>

Dated June 26, 1914.

MISSISSIPPI.

Railroad Commission.

**IN THE MATTER OF THE APPLICATION ON THE PART OF THE
MISSISSIPPI HOME TELEPHONE COMPANY FOR LEAVE TO
CLOSE DOWN ITS PLANT IN JACKSON, MISSISSIPPI.**

Case No. 4128.

Dated July 7, 1914.

**Grant of Additional Time during Which Telephone Plant May Remain
Closed, Pending Installation of New Equipment.**

ORDER.

This matter came on this day to be heard on the application made by the general manager of the Mississippi Home Telephone Company and the attorney for the said company, for an extension of the time allowed by the Commission* on the eighth day of April last to the said telephone company within which to make the necessary arrangements to change its telephone system in the city of Jackson:

And it appearing that the said telephone company is negotiating for equipment and that it has not yet consummated any agreement or arrangement to procure and install the necessary equipment intended to be substituted for that which it has been using heretofore,

It is, therefore, ordered, That the said Mississippi Home Telephone Company for the purposes above indicated shall have 90 days additional time within which and during which it may continue the plant in Jackson in its present condition and during which it shall not be required to

* The previous order of the Commission is printed in Commission Leaflet No. 30, at page 1245.— Ed.

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operate the said plant unless this arrangement should be consummated within that time.

And it is further ordered, That if the arrangement should not be consummated within the said 90 days that the said company report further to this Commission at the end of the said 90 days showing what has been done by it looking to the installation of the proposed new equipment.

Ordered this the seventh day of July, 1914.

MISSOURI.

Public Service Commission.

EDINA COMMERCIAL CLUB *v.* EDINA TELEPHONE COMPANY.

Case No. 311.

Decided June 29, 1914.

Construction of "Cooper Act" Enabling Municipalities to Fix Rates for Utilities, Within the Corporate Limits.

Held: That the power of the city under the Cooper Act was circumscribed as to territory by the corporate limits of the city.

That that part of the ordinance of the city of Edina passed under the Cooper Act, which attempts to establish the rights of the city and telephone company outside of the corporate limits of Edina, is unenforceable.*

OPINION.

The Edina Commercial Club, a voluntary association of the city of Edina, Knox County, this State, on the eleventh day of March, 1914, filed with this Commission a complaint against the defendant, the Edina Telephone Company, alleging that the defendant was charging for telephone service rates in excess of its schedule on file with the Commission, and praying an order requiring the company to furnish service in accordance with said schedule and for general relief. The defendant filed answer denying the allegations of the complaint as to excessive charges, and alleging that its rates for service were the rates shown by its schedule as published and on file with the Commission. The case was heard at Edina, April 3, 1914.

It was developed at the inception of the hearing that the real grievance of the complainant was not that alleged in the complaint, namely, the charging of rates in excess of the rates on file, but rather that the company was not giving to its subscribers in Edina free service to all points

* Editor's headnote.

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on its own line and on other lines within Knox County, and the complaint was accordingly amended. The change of issues thus made will more plainly appear by setting out Paragraph 3 of the complaint as filed and also as amended at the hearing. Said Paragraph 3 as filed was as follows:

"That the defendant has heretofore to wit, on the twenty-second day of August, 1913, filed with the Public Service Commission of the State of Missouri, as required by Section 88 of the Public Service Commission Law, a schedule showing the rates, rentals and charges for each kind of telephone service as furnished by it over its telephone lines in the city of Edina and Knox County, Missouri; that, as shown by said schedule, the initial rate area of the defendant from the central office in the city of Edina, county of Knox, State of Missouri, includes the city of Edina and also Knox County, that is to say, that the subscribers of the defendant telephone company in the city of Edina and Knox County are entitled to receive from the defendant service to any point on its line in the city of Edina and also service to any point on its line in Knox County, and the subscribers for telephone service at any point in Knox County are entitled to receive service to any point in Edina on defendant's line at the rates as indicated in the schedule of the defendant as filed with the Public Service Commission of this State on the twenty-second day of August, 1913; that the defendant refuses to furnish its subscribers living in the city of Edina with telephone service to points outside the city of Edina in Knox County, but has wholly refused to furnish telephone subscribers in the city of Edina with service to other points on its lines in Knox County at the rates indicated in such schedule and that defendant threatens and will so continue to refuse to furnish subscribers to its service in Edina with service to points on its line in Knox County for the price and sum as shown by its schedule aforesaid."

The amendment changed only the latter part of said paragraph and such part as amended reads as follows (the words added being indicated by *italics*):

"That the defendant refuses to furnish its subscribers living in the city of Edina with telephone service to *subscribers on its and other lines* outside the city of Edina in Knox County, *and* has wholly refused to furnish telephone subscribers in the city of Edina with service to other points on its *and other lines* in Knox County *and other points within a radius of 20 miles of Edina* at the rates indicated in such schedule and that defendant threatens and will so continue to refuse to furnish subscribers to its service in Edina with service to *subscribers and points on its and other lines* in Knox County, *as provided in its contract and franchise granted by said city of Edina*, for the price and sum as shown by its schedule aforesaid."

The evidence disclosed the following facts:

The Edina Telephone Company has a capital stock of \$1,000, the stock being owned by G. W. Kinsel, general manager of the company, and two others. The property of the company is of the value of about \$9,000. It owns and operates an exchange in Edina and has lines leading out into the surrounding country. There are about 250 subscribers in Edina and a like number in the country. In some instances the lines extending into the country are owned a part of the distance by the company and the remainder by the subscribers, in others, the lines are owned by the subscribers and the station equipment by the company, while in still others, both station equipment and lines to the city limits are owned by the subscribers. In such cases lower rates are charged, by reason of such divided ownership.

There are small exchanges at neighboring towns and villages in Knox County which offer an exchange of free service with the defendant company (some of these exchanges now have such service), and complainant contends that the subscribers residing in Edina are entitled to free service with all lines in the county, whether owned by the defendant company or not. The exchange upon which the controversy was largely centered is that of the town of Novelty, a village in the southwestern part of Knox County, near the line of Shelby County. Novelty is a very small place with a telephone exchange of 125 subscribers, most of whom are farmers residing in the neighborhood outside of the village. The Novelty exchange has free arrangements with a number of exchanges in Shelby County. Several years ago it had similar free service relations with the Edina exchange, but the line connecting the two towns became out of repair and the service was discontinued, to the great disadvantage of the business interests of Edina. Novelty was without a railroad until last year, and free telephone service to Edina is not so important to it now as formerly. The business men of Edina were anxious to have the former free service arrangements with the

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Novelty exchange reinstated, and to that end a delegation made a trip to Novelty to confer with the officers of the telephone company at that place, Kinsel, defendant's manager, being one of the party. This conference was pre-arranged with the officers of the Novelty exchange, who claimed to be favorable to the project. At the conference the president of the Novelty exchange insisted that in order to establish free service relations with that company, the Edina exchange must also take into the arrangement on the same basis all of the exchanges in Shelby County with which the Novelty company had free service relations. Kinsel refused to accede to this proposition, on the ground that his company could not afford to render the additional service without an increase of rates, but he offered to enter into such free service arrangements with the Novelty exchange alone. He made a further proposition that the entire controversy be submitted for decision to six men, three to be selected by each side, and that both companies abide by the result of such decision. This offer was declined by the Novelty company and there the matter ended.

The schedule of rates of the defendant company filed with this Commission is the following:

RATES FOR SERVICE TO SUBSCRIBERS LOCATED WITHIN INITIAL RATE AREA,
COMPANY FURNISHING AND MAINTAINING ALL EQUIPMENT.

	<i>Per month</i>	<i>Per year</i>
Business, special lines, wall set.....	\$1 75	\$21 00
Business, party lines, wall set.....	1 50	18 00
Business, extension sets, wall set.....	1 00	12 00
Residence, special lines, wall set.....	1 25	15 00
Residence, two-party lines, wall set.....	1 00	12 00

RATES ON RURAL OR FARM LINES BEYOND INITIAL RATE AREA.

Subscriber furnishing and maintaining all equipment for each subscriber, per year	\$4 00
Subscriber furnishing and maintaining line and telephone company the station equipment, for each subscriber, per year....	7 00

The complainant introduced in evidence an ordinance of the city of Edina, duly passed on the seventh day of

February, 1910, fixing the rates to be charged by the defendant telephone company; also an ordinance amendatory thereof passed on the first day of August, 1910. Section 7 of the ordinance of February 1, 1910, is as follows:

"The monthly rental of telephones furnished by the Edina Telephone Company, a corporation, to its patrons in said city of Edina, Missouri, shall not exceed the sum of \$1.00 for each 'phone in resident houses per month and shall not exceed the sum of \$1.25 per month for each 'phone in business houses in said city of Edina, Missouri. *Provided*, however, that if the said Edina Telephone Company, a corporation, its successors and assigns, shall furnish to all of its said patrons in said city of Edina, Missouri, connection with all other telephone lines and switchboards in Knox County, Missouri, and all other switchboards within a radius of 20 miles of said city of Edina, Missouri, then and in such event, the rental rate shall not exceed the sum of \$1.25 for each 'phone furnished in resident houses per month, and shall not exceed the sum of \$1.50 per month for each 'phone furnished in business houses in the city of Edina, Missouri; and the said Edina telephone office shall be open, at all times, both day and night, and furnish continual service to its patrons, except on the first day of the week, commonly called Sunday, when said office may be closed on said days from 10 o'clock A. M. until 1 o'clock P. M."

The amendatory ordinance need not be set out for reasons which will hereinafter appear.

CONCLUSIONS.

Upon a review of the testimony, we have reached the conclusion that the complaint cannot be sustained, and for the reasons following:

1. As to the complaint that the defendant was charging rates in excess of the schedule on file with the Commission, it is sufficient to say that there is an entire failure of proof.
2. It should be observed that while the amendment to the complaint refers to the service required of the defendant company "as provided in its contract and franchise granted by said city of Edina" there is no testimony in the record as to either a franchise or contract between the city and the defendant except a reference to a franchise which had expired. The "franchise and contract" referred to and relied upon by complainant is the city ordi-

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nance passed pursuant to the Cooper Act, which act conferred authority upon the city to fix telephone rates—an entirely different matter from a franchise contract between the city and company prescribing the terms and conditions of the use of the streets, alleys and public places of the municipality and of service by the company.

The amendment of the complaint at the hearing was intended to broaden its scope, so as to charge that the defendant refused to furnish to its subscribers in Edina service to points on its line and other lines in Knox County, “as provided in its contract and franchise granted by said city of Edina.” This amendment introduced an entirely new issue and makes necessary a consideration of the authority of the city to fix telephone rates and the jurisdiction of this Commission in the premises.

Sections 9568, 9569, 9570, R. S. 1909, known as the “Cooper Act,” conferred upon cities “power and authority to fix by ordinance the rates of charge for the services of such utilities within their corporate limits.” It was further provided in said act that the rates fixed under the provisions thereof should not be changed oftener than once every two years. This law was enacted in the year 1907, and prior thereto cities were without authority in the matter of fixing rates for telephone service. *State ex rel. v. Telephone Company*, 189 Mo. 83.

Pursuant to the provisions of that act the city of Edina on February 1, 1910, passed an ordinance fixing telephone rates, as shown in Section 7 thereof, hereinabove set out. The ordinance passed August 1 of the same year purported to change the rates as fixed in the former ordinance. The Cooper Act expressly forbade any change in the rates fixed under its authority within a period of two years; hence the ordinance of August, 1910, was invalid and the committee recently appointed by the Commercial Club of Edina, complainant herein, to investigate the telephone controversy so found in its report, which was introduced in evidence. (See complainant’s exhibit “B.”)

We have before us, therefore, the ordinance of February 7, 1910, under which complainant alleges that subscribers in the city of Edina are denied free service on certain telephone lines in Knox County, but outside of the limits of said city. The jurisdiction of this Commission over telephone companies as prescribed by Section 90 of the Public Service Commission Law, extends to the supervision of such companies "with respect to their compliance with all of the provisions of law, orders and decisions of the Commission, franchises and charter requirements." The power of the city under the Cooper Act was circumscribed as to territory by the "corporate limits" of the city (*Home Tel. Co. v. Carthage*, 235 Mo. 644, 656), and it is apparent that so far as the Cooper Act is concerned such part of the ordinance as attempts to establish the rights of the city and telephone company outside of the corporate limits of Edina is unenforceable, and that this Commission is without jurisdiction to act thereunder. Moreover, the Cooper Act confers power upon cities "to fix the rates of charge for the services of such utilities," etc. It gave no power other than over the subject of "Rates of Charge for Service." So that the power of the city to contract with or grant a franchise to a telephone company and to prescribe therein conditions as to service by the company remained unaffected by the Cooper Act. The complaint in this cause under the amendment goes only to the service to be rendered, and not to the rates charged. Attention was called to this fact and emphasized at the hearing by counsel for complainant. And as the refusal of the defendant to render the service complained of is as to service entirely outside of the city of Edina, we cannot consider the ordinance in evidence as affording a basis for the exercise of our jurisdiction.

3. Many other matters not within the allegations of the complaint were testified to by witnesses for complainant. We shall not discuss them in this report, for the reason that they are not properly before us and therefore it would not be profitable to do so.

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An order will be entered as of this date, in accordance with the views above expressed.

ORDER.

The above entitled cause being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof: Now, after due deliberation,

It is ordered, 1. That the complaint in the above entitled cause be, and the same hereby is, dismissed.

Ordered, 2. That the Secretary of the Commission forthwith serve upon the parties complainant and defendant certified copies of this order and the opinion filed herein.

Dated at Jefferson City, Missouri, this twenty-ninth day of June, 1914.

IN THE MATTER OF THE APPLICATION OF THE LIBERTY TELEPHONE COMPANY, A CORPORATION, FOR AN ORDER APPROVING A PLAN OF REORGANIZATION, FOR A CERTIFICATE OF NECESSITY AND AN ORDER AUTHORIZING THE ISSUE OF STOCK.

Case No. 402.

Decided June 29, 1914.

Refusal to Approve Plan of Reorganization Involving Exchange of Treasury Stock for Rights of Way and Services in Procuring Same.

The Commission was asked to approve a plan of reorganization involving a contract wherein the Liberty Telephone Company agreed to pay \$10,000 to F. W. Fratt for rights of way to be procured by him and for his services in connection therewith. On his part Fratt agreed to procure certain rights of way and to purchase \$10,000 of treasury stock, and upon conditions set forth, to purchase certain securities which the company proposed to issue upon its reorganization. The entire agreement was conditioned upon the company's ability to secure the Commission's approval of the plan of reorganization and proposed extensions of its lines.

The Commission found that the agreement was in effect a proposal to issue to Fratt \$10,000 of stock in payment (a) for the right to use the public streets of North Kansas City to be granted by the North Kansas City Development Company, (b) for the right to use certain easements reserved by the development company in the plat of North Kansas City and (c) for Mr. Fratt's services in financing the plan of reorganization.

Held: That such a grant of the right to use the public streets may not be capitalized.

The Commission was not satisfied that the property to be acquired and the services of Mr. Fratt were reasonably worth \$10,000, and therefore refused to approve the plan of reorganization.*

OPINION.

I.

The application filed herein, entitled as above stated, states in substance that the Liberty Telephone Company is a corporation duly organized under the laws of this State with its principal place of business at Liberty, Missouri; that it conducts a general telephone business in Clay County, in and around the city of Liberty, the village of Randolph and the city of North Kansas City, all in said county; that its property consists of telephone exchanges at the city of Liberty, the village of Randolph and the city of North Kansas City, together with all the equipment, lines of wire and poles, and all appliances necessary for conducting a general city and rural telephone business; that the applicant desires to issue 100 shares of common stock of the par value of \$100 per share; that the use to which the capital to be secured by the issuance of such stock is to acquire property and for the purpose of financing the increase of capital stock, and a bond issue for the purpose of raising money to be used in construction, extension and improvement facilities; that the property to be acquired with the money secured by such issue of stock is the following:

The right of way, license or privilege through the streets, alleys and other thoroughfares or reservations, within the

* Editor's headnote.

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limits of the city of North Kansas City, in Clay County, Missouri, which are owned or controlled by the North Kansas City Development Company, as shown by the attached plat of North Kansas City, marked "Exhibit B".

That the said property for such use and the financing of said company upon reorganizing is reasonably worth \$10,000; that a contract for the acquiring of said right of way, license or privilege, through the streets, alleys and other thoroughfares or reservations in said North Kansas City, and for the financing of said Liberty Telephone Company upon an increase of its capital stock and bond issue heretofore referred to has been entered into with Frederick W. Fratt, a copy of such contract is attached to the petition as "Exhibit C"; that the ability of the North Kansas City Development Company to make a grant of the property which is to be acquired as heretofore stated is shown by the dedication of the North Kansas City Development Company, which said dedication is attached to this application as "Exhibit D".

That a certificate of the proceedings of the directors and stockholders of the Liberty Telephone Company, authorizing the issue of the said 100 shares of stock is attached to the petition as "Exhibit E"; that a certified list of the stock already outstanding is attached to the application as "Exhibit F".

The applicant asks that the Public Service Commission make an order approving, ratifying and affirming the plan of reorganization as set forth in the contract attached to the application as "Exhibit C"; and to grant a certificate of necessity, providing for the acquisition of the property mentioned in this petition, and also an order authorizing the issuance of 100 shares of its capital stock of the value of \$10,000 for the use of the purposes set forth in the application and for such other and further orders as shall be just and proper in the premises.

A hearing was held before the Commission in its office in Jefferson City on the fifteenth day of June, 1914, at which time the applicant offered evidence in support of its application.

II.

The plan of reorganization which the applicant seeks to have approved by this Commission is set forth in a copy of a contract filed with the application herein as "Exhibit C", and which purports to be a copy of a contract entered into on the twenty-sixth day of March, 1914, by and between Pascal Parker, acting for himself, and at the request and on behalf of the other stockholders of the Liberty Telephone Company as party of the first part, and Frederick W. Fratt as party of the second part, wherein it is recited in substance: That in order that the Liberty Telephone Company may furnish adequate facilities, and that public necessity requires that it make betterments and extensions to its telephone system and in order to provide the money for such betterments and extensions, and to protect its stockholders, that a reorganization of said company be had. That the several stockholders having consented to a reorganization as herein provided and having requested Pascal Parker, president and principal stockholder, to effect said reorganization and to act for them and on their behalf in such undertaking and the said stockholders having deposited their respective certificates of stock with the Commercial Bank of Liberty, duly endorsed and having delivered to said Pascal Parker their proxies and power of attorney, authorizing him to carry out said plan and agreeing to receive and accept an equal number of shares in lieu of those deposited aforesaid when the capital stock shall have been increased as provided in said contract which was in substance as follows:

That the Liberty Telephone Company had lines in operation in North Kansas City but desired to establish an exchange there, and that in order to do so and to extend its lines it was necessary to acquire a right of way, license or privilege through the streets, alleys and reservations in said North Kansas City, now owned or controlled by the said North Kansas City Development Company, which was represented to own and control a tract of ground in Clay County and which had been platted and was rapidly developing into a city.

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That the second party (Fratt), agreed to procure and deliver to said first party a grant of a right of way, license or privilege for its lines on and along all streets and alleys or reservations where the same are owned or controlled by the North Kansas City Development Company so far as the same may be reasonably required to meet the demands of public necessity with the understanding that said right shall be granted from time to time so as to best serve the development of the city.

That said second party agreed to subscribe for and take over at par such a portion of the capital stock of said telephone company as the same now exists or shall hereafter from time to time be issued or be increased up to a total capitalization of not more than \$100,000, so that second party's proportion shall at all times be one-half of said capitalization and not over \$50,000.

It was further recited that the present authorized capital stock of the Liberty Telephone Company was \$50,000, all of which had been issued excepting \$10,000 worth, which remained in the treasury of the company; that said company had authorized a bonded indebtedness of \$25,000, secured by a Deed of Trust, dated July 15, 1903, with the Pioneer Trust Company as trustee, of which \$15,000 had been issued and is now outstanding, bearing 7 per cent. interest and for the redemption of which there is now deposited with the Pioneer Trust Company a special fund provided pursuant to said deed of trust and securing the payment thereof the sum of \$6,095.90.

That second party agreed to subscribe for 100 shares of stock now in the treasury and pay \$10,000 therefor. That the capital stock of said telephone company shall be increased to \$100,000, said first party agreeing to exercise the power of said corporation to effect said increase. Second party further agreed to subscribe at par for 300 shares of the new stock conditional, that so much of the proceeds of said subscription as may be necessary, together with the aforesaid fund of \$6,095.90, with accrued interest thereon, shall be used for the purpose of the payment,

cancellation and retirement of the outstanding bonds and other indebtedness of the telephone company. The remainder of the money to be used in betterments and extensions. The balance of said new stock, \$20,000, shall remain in the treasury and shall be issued from time to time only as additional betterments and further extensions are needed. When such additional money is needed the party of the first part, for himself and other shareholders representing his one-half ownership or control, and the second party or his assigns shall subscribe for an equal number of shares of stock, if first party is unable to furnish money for his share of such additional money as needed, second party shall furnish it provided the telephone company is solvent and the stock reasonably worth par in value. First party shall make and deliver his note payable to second party and deposit stock of the company to secure payment of the same.

That after \$100,000 in stock has been issued and additional money is required, second party agrees conditional, that the telephone company is solvent and public necessity and convenience so demands, to furnish additional money as needed from time to time to purchase not over \$100,000 of said telephone company's bonds at 6 per cent. interest, payable not less than twenty years on the basis of eighty-five cents on the dollar, provided the telephone company legally issues such bonds and cannot sell same at a higher figure, said second party however to have option to purchase at any higher offer first party can obtain.

That in consideration of the covenants and agreements herein contained on the part of second party and to enable him to forthwith procure said right of way, license or privilege from the North Kansas City Development Company and undertake to carry out the other obligations here assumed, said Pascal Parker in behalf of said telephone company agrees to pay said second party upon the delivery of this contract \$10,000 in full compensation for such right of way, license or privilege and the service which he is to render including all expenses, brokerage and commissions connected therewith.

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It was agreed that all betterments and extensions should be made upon the certificate of the Public Service Commission and stock shall be issued as authorized by this Commission. That this agreement is conditional upon the ability of Pascal Parker to obtain such certificate and reorganize the telephone company on the plans set forth.

That second party may assign this agreement to other responsible parties and upon such assignee agreeing and promising in writing to carry out this agreement, said Fratt shall be released.

It was agreed that if the business of the company does not so increase as to require the expenditures of all the money herein provided for within ten years from date hereof, this agreement shall end and if sooner terminated by mutual consent or by fulfillment of all conditions, then each party shall release the other, etc.

III

The first plat of North Kansas City as executed by the North Kansas City Development Company and attached to the application as "Exhibit D" contains the following:

"The streets, boulevards, avenues, roads and alleys, as designated on this plat, are hereby dedicated to public street use, subject to the right of constructing, maintaining and operating street car lines, telephone and telegraph lines, electric lines for light, heat and power; cables, ducts and conduits; gas, sewer, water and steam pipes; all of which rights are hereby expressly reserved unto the said North Kansas City Development Company, its successors and assigns forever as fully and entirely as if no dedication of said land to public use had been made."

And also the plat of the first addition to North Kansas City as made by the North Kansas City Development Company (see "Exhibit D"), contains the following:

"The streets, boulevards, avenues, roads and alleys, as designated on this plat are hereby dedicated to public use, subject to the right of constructing, maintaining and operating street car lines, telephone and telegraph lines; electric lines for light, heat and power; cables, ducts and conduits; gas, sewer, water and steam pipes; all of which rights are hereby expressly reserved unto the said North Kansas City Development Company, its successors and assigns forever as fully and entirely as if no dedication of said land to public use had been made."

And further provides:

"The North Kansas City Development Company hereby reserves the right to locate, construct and maintain or authorize the location, construction and maintenance of conduits, water, gas and sewer pipes, manholes, flush tanks, poles and wires, any or all of them, upon the rear 3 feet of all lots in said addition, except in blocks 2, 3, 4 and 5, and no building or permanent improvement shall be placed upon said rear 3 feet.

"That the foregoing covenants and restrictions shall run with the title to the lot or land, and bind the present owner, its successors and assigns, and all persons claiming by, through or under it, shall be taken to hold and agree to covenant with the owner of said lots, its successors and assigns, and each of them, to comply with and observe said covenants and restrictions as to the use of said land and the construction of the improvements thereon;" etc.

Both plats purports to have been executed by the North Kansas City Development Company on January 30, 1914.

This so-called reorganization agreement does not meet the approval of the Commission and the following objections to it are noted:

It is provided therein that Mr. Fratt shall purchase \$10,000 worth of the telephone company's stock, now in its treasury, as its par value and the telephone company shall pay Mr. Fratt \$10,000 in full compensation for such right of way to use the streets, alleys, thoroughfares and reservations of North Kansas City Development Company to be procured from the North Kansas City Development Company by Mr. Fratt, and to include full pay for all his services in connection with the reorganization.

Thus it is proposed in effect to issue to Mr. Fratt by the telephone company \$10,000 in stock of the telephone company in payment for (a) the right to use the public streets of North Kansas City to be granted by the North Kansas City Development Company, by virtue of the reservations made in the plat of said North Kansas City, (b) also in payment for the right to be granted by said development company to use reservations named in the plat of North Kansas City by the said development company and (c) to pay Mr. Fratt for financing the plan of reorganization.

Mr. Carr, a witness at the hearing, claimed that the right

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to use the public streets which was to be granted by the North Kansas City Development Company to the telephone company was not considered as of any part of the consideration for the \$10,000 worth of stock to be issued to Fratt. Such a grant by the North Kansas City Development Company to the telephone company to use the public streets could not be capitalized. Section 98a, Public Service Commission Law, Section 3326, R. S. Mo., 1909; *Roaring Springs Townsite Company v. Paducah Telephone Company*, 164 S. W. 1 c. 52. Said witness did testify that the proposed \$10,000 worth of stock to be issued to Mr. Fratt, or the money from the sale thereof to Fratt, was for the purpose (first) of paying him for the right to be obtained for the telephone company to use the reservations as shown on the plat of North Kansas City which, according to the witness, was of the reasonable value of \$5,000, and (second) that the services of Mr. Fratt in agreeing to finance the proposed reorganization were worth \$5,000.

The testimony as offered on both points last named was indefinite and general in character. There was no testimony tending to show the reasonable value of the right to use the private reservations of the North Kansas City Development Company other than the mere statement of witness Carr. He stated that the right was worth \$5,000. The testimony as to the services rendered by Fratt was equally indefinite.

The Commission is not satisfied from the evidence in this case that the telephone company would receive the equivalent of the face value of the proposed stock to be issued to Mr. Fratt in the amount of \$10,000, or that said property and services of Mr. Fratt are reasonably worth \$10,000, and therefore the Commission does not approve the proposed plan of reorganization. It is also noted that it is proposed to pay Mr. Fratt \$10,000 in stock now and that his agreement to subscribe for both stocks and bonds is conditional.

The application of the Liberty Telephone Company herein should therefore in all things be denied and the same should be dismissed without prejudice, and it is so ordered.

ORDER.

Application having been heretofore made by the Liberty Telephone Company for an order of this Commission approving a plan of reorganization, for a certificate of necessity and an order authorizing the issue of stock, and the same having been duly heard by this Commission at its office in Jefferson City on the fifteenth day of June, 1914, and after full and due consideration of all matters and things in connection therewith, this Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; it is

Ordered, (1) That the application of the Liberty Telephone Company herein aforesaid be and the same is hereby dismissed without prejudice.

Ordered, (2) That this order be effective on and after the date hereof.

Dated at Jefferson City, Missouri, this twenty-ninth day of June, 1914.

In re FREE AND REDUCED RATE SERVICE UNDER SECTION 88
OF THE PUBLIC SERVICE COMMISSION LAW.

Conference Ruling No. 12.*

(As Modified on Rehearing.)

Dated July 31, 1914.

**Amendment of Conference Ruling No. 12 so as to Permit Continuance of
Free and Reduced Rate Telephonic and Telegraphic Service
to Railroads under Contracts in Force Prior to the
Passage of the Public Service Commission Law.**

CONFERENCE RULING.

The question has been submitted to the Commission whether officers and employees of a railroad company may

* The original ruling, dated March 16, 1914, is printed in Commission Leaflet No. 29, at page 867.—ED.

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lawfully use half-rate franks issued to them by a telegraph company for the corporate business of the railroad company within the State of Missouri.

The answer to this question involves the construction of Paragraph 3 of Section 88 of the Public Service Commission Law, which is as follows:

“ No telegraph corporation or telephone corporation subject to the provisions of this act shall, directly or indirectly, give any free or reduced service, or any free pass or frank for the transmission of messages by either telephone or telegraph between points within this State, except to its officers, employees, agents, surgeons, physicians, attorneys-at-law and their families; to persons or corporations exclusively engaged in charitable and eleemosynary work and ministers of religions; to officers and employees of other telegraph corporations and telephone corporations, railroad corporations and street railroad corporations. But this subdivision shall not apply to state, municipal or federal contracts.”

The free or reduced service thus excepted from the general prohibition of the act, as applicable to the facts of the inquiry, is permitted to the “ officers and employees ” of the railroad company and not to the corporation itself, and it is the opinion of the Commission that it was the intention of the legislature to limit the use of free or reduced service to such officers and employees as a class, and that the half-rate franks in question may not be used by the officers and employees of the railroad company for the corporate business of the company within this State.

The Commission is of the further opinion that the Act of 1911, Pages 154-5, requiring all railroad companies in this State to install and maintain in every railroad station where an agent is kept, a telephone having proper connection with the local telephone exchange having the largest number of subscribers in the city, town or community in which said railroad station is located, and which has a telephone operator, does not authorize free service of such telephone to the railroad company.

The Commission is of the further opinion that under the provisions of Subsection 4 of Section 87 of the Public Serv-

ice Commission Law that telegraph and telephone corporations may lawfully continue to furnish railroad corporations free or reduced franks, or free or reduced service for corporate use under the terms of contracts which were in force at the date the Public Service Commission Law became effective and which contracts have not yet been terminated as therein provided.

NEBRASKA.

State Railway Commission.

IN THE MATTER OF THE APPLICATION OF THE NEBRASKA TELEPHONE COMPANY FOR AUTHORITY TO DISCONTINUE ITS GROUNDED CIRCUIT RATES IN CONNECTION WITH SPRINGFIELD EXCHANGE.

Application No. 2129.

Granted June 2, 1914.

Approval of Discontinuance of Grounded Circuit Rate.

EXCERPT FROM MINUTES OF THE COMMISSION.

“Application having been made by the Nebraska Telephone Company for authority to discontinue its grounded circuit rates in connection with its Springfield exchange, and it appearing to the Commission, upon due investigation and consideration, that the company now has but five grounded circuit 'phones at Springfield, and that the application is reasonable and warranted by existing conditions the desired authority was on motion granted, effective as of June 1, 1914, an emergency existing, and it was directed that the company be notified by letter of the action taken.”

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO PUBLISH A SCHEDULE OF METALLIC CIRCUIT RATES IN CONNECTION WITH ITS ASHLAND EXCHANGE.

Application No. 2136.

Granted June 9, 1914.

Approval of Rates for Metallic Circuit Service

ORDER.

WHEREAS, the Lincoln Telephone and Telegraph Company has made application to the Nebraska State Railway Commission for authority to publish a schedule of metallic circuit service rates in connection with its Ashland exchange, the proposed schedule being dated June 3, 1914, and providing for rates in addition to the grounded circuit service rates now in force at said exchange, the proposed schedule being as follows:

	<i>Net</i>
Individual business	\$30 00
Individual residence	18 00
2-Party residence	15 00
Farm residence	18 00
Farm business	24 00

City bills are payable monthly in advance at the company's office.

Farm bills are payable quarterly in advance at the company's office.

The difference between gross and net rates will be allowed as a discount for prompt payment. The discount on monthly bills shall be allowed if payment is made at the company's office on or before the tenth day of the month for which the bill is rendered.

The discount on quarterly bills shall be allowed if payment is made at the company's office during the first month of the quarter.

No discount should be allowed if any balance for previous service rendered remains unpaid.

Inner radius is city limits.

Additional charge outside of inner radius where there is an existing pole line, for each quarter mile or fraction thereof:

Metallic circuit — 1-party	\$5 00
Metallic circuit — 2-party	3 00
Extra service (two parties using same telephone) business.	12 00
Extension sets, business	12 00
Extension sets (special wall), residence only.	6 00
Extension bells	3 00

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And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions,

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is, hereby granted, subject to complaint, the metallic service rates as above authorized to become effective from and after July 1, 1914.

Made and entered at Lincoln, Nebraska, this ninth day of June, 1914.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO INSTALL A NEW SCHEDULE OF RATES FOR ITS FARM LINE SERVICE CONNECTED WITH TAMORA EXCHANGE AND TO WITHDRAW PRESENT SCHEDULE.

Application No. 2137.

Granted June 11, 1914.

Approval of Rates for Farm Line Service.

ORDER.

WHEREAS, the Lincoln Telephone and Telegraph Company has made application to the Nebraska State Railway Commission for authority to install a new schedule of rates governing farm line service on Tamora exchange, and withdraw present schedule, the proposed rates being as follows:

Ten-party metallic farm residence with privilege of added service to one adjoining Lincoln Telephone and Telegraph Company exchange.....	\$1 50 per month net
Ten-party metallic farm residence with privilege of added service to two adjoining Lincoln Telephone and Telegraph Company exchanges.....	1 75 per month net
Ten-party metallic farm residence with privilege of service to exchanges at Seward, Germantown, Utica, Goehner, Beaver Crossing and Milford....	2 00 per month net

The farm service to extra towns must be taken by lines. The majority of the patrons on each line are to decide the additional exchange or exchanges desired. (The line shall be the unit of service to the one extra town and the particular telephone shall be the unit of service to other towns if more than one is subscribed for.)

To protect the service from abuse by those not paying for it, each subscriber shall agree to pay the regular toll charges on every message to other exchanges from his telephone, except to the town chosen for added service. The switchboard signals shall be marked to indicate the added service chosen by each line.

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable, warranted by existing conditions, and that the proposed schedule is approved by a majority of the farm line subscribers connected with Tamora exchange,

It is ordered by the Nebraska State Railway Commission, That the desired authority be, and the same is, hereby granted, the rate schedule as above authorized to become effective from and after June 1, 1914, an emergency existing, and to cancel the present schedule as now of record in this office.

Made and entered at Lincoln, Nebraska, this eleventh day of June, 1914.

IN THE MATTER OF THE APPLICATION OF THE COMSTOCK INDEPENDENT TELEPHONE COMPANY FOR AUTHORITY TO INCREASE ITS RATES, AND TO MAKE AN ADDITIONAL CHARGE OF TWENTY-FIVE CENTS PER MONTH ON EACH CLASS OF SERVICE IF PAYMENTS ARE NOT MADE AT THE TENTH OF EACH MONTH.

Application No. 2029.

Decided June 18, 1914.

**Inadequate Revenue — Increase in Rates for Exchange Service Approved —
Increase in Switching Rates Denied — Discount for
Prompt Payment of Bills Approved.**

APPEARANCE:

W. F. Dunbar, for the applicant.

OPINION.

TAYLOR, *Commissioner*:

The rates now in effect on applicant's exchange are as follows: Business, \$1.50 per month; residence, \$1.00 per month; farm, \$1.00 per month; switching service, 40 cents per month. The company now asks for authority to increase the rates for business, residence and farm service 25 cents per month and the switching rate from 40 cents to 65 cents per month.

The history of this company is interesting as well as typical. It was organized in May, 1906, and was a consolidation of a number of farm lines that had been built into the town of Comstock. The equipment at first was meager and crude, the switchboard being a homemade affair operated with a single plug. For a distribution system the company relied on barb wire fences. This was soon found to be unsatisfactory and iron wire was strung on 2x4s nailed to the fence posts. As the system expanded, this kind of construction was also found to be inadequate, and small cedar poles were placed to carry the wire, although some of the 2x4 supports are still in service. There were few, if any, cross-arms in the beginning, and the wire was attached to the poles with small porcelain insulators. Practically all of the labor incident to the first construction of the plant was performed by the officers and stockholders without charge to the company. There were about fifty subscribers on the system when the consolidation was effected, but with the installation of a switching device the exchange began to grow and it was but a short time until the improvised switchboard was entirely inadequate to accommodate the traffic. Late in the year 1906 a small switchboard was purchased of sufficient capacity to handle the traffic, and this switchboard is still in service. At the time it was installed considerable reconstruction had to be done to bring the plant up to the standard it established. Since that time but few improvements have been made in the plant, although considerable sums of money have been expended in maintaining it.

Needless to say, the equipment is badly depreciated and will have to be practically rebuilt if anything approaching satisfactory service is furnished to the public. The switch-board is worn out and will have to be replaced by a new one of modern type. There is need of cable in the town, both on account of the large number of open wires and for the reason that the wire in use is old and subject to constant repair.

At the present time there are 146 subscribers on the exchange, in addition to which there are 67 farm subscribers switched by the exchange. As usual in such companies the books and accounts are incomplete and improperly kept. Operating expenses, maintenance and cost of new construction are so intermingled that it is impossible to secure an accurate accounting history of the plant. The Commission's engineers and accountants made an investigation of what records there are and of the physical plant, and from these studies and the testimony adduced at the hearing held in Comstock on April 17, 1914, it is possible to get a general idea of the investment in the plant and the receipts and expenditures.

While the authorized capital stock of the company is \$10,000, but \$2,650 has ever been paid up in cash. No dividends have ever been paid on the stock, but in 1910 a stock dividend of \$2,500 was declared, the stock being apportioned according to the holdings of each stockholder. According to Mr. Dunbar, an officer of the company since its organization, this new stock was issued in lieu of unpaid dividends, money loaned to the company and for services rendered. No dividends have ever been paid on this stock. The actual capital investment in the plant appears to be between \$4,000 and \$5,000, made up as follows: Capital stock, \$2,650; loans, \$800; accounts payable, \$200, and working capital, \$350. In addition to these items there should be some allowance for the labor contributed by the stockholders. It is reasonable to assume, therefore, that the investment has been about \$4,500. The reproduction new value found by the Commission's engineers is \$5,990

and the present value is \$3,751. New construction to the amount of \$1,200 to \$1,500 has been paid for out of the revenues of the company.

Averaging the earnings for the four years from 1910 to 1913, inclusive, we find the annual gross income to be as follows:

Toll	\$91 86
Telephone rental	1,569 01
Switching	221 70
Sundry sales	12 63

Or a total revenue of \$1,895 20

The average expenses for the same period have been as follows:

Maintenance	\$356 45
Direct operation	919 50
General expense	152 89
Taxes	30 00

Or a total of \$1,458 84

This includes nothing for return on the investment and only a small amount for depreciation. The balance left for these purposes is \$436.36. An average of four years expenses is hardly fair to the applicant, however, for the reason that the expenditure for maintenance in the year 1913 was double that for the years 1910 and 1911, being \$531.36 for the former as against \$269 and \$258.57 for the latter. The condition of the plant plainly calls for an added allowance for maintenance and depreciation, and, as no reserve is available for this purpose, it will be necessary to provide for the necessity through increased revenue. During the four-year period there was expended for maintenance an average of 8.8 per cent. of the capital investment in the plant. This is somewhat in excess of the amount usually required for current repairs and covers a portion of unrealized depreciation.

Using the figures of 1913 as a basis and allowing 7 per cent. return on \$4,500, and 4 per cent. on the same amount for unrealized depreciation, there is a deficit under the present rates of \$167.65. The proposed rates would increase the gross revenue \$438 annually. The new rates would thus produce a surplus of \$270.35. In view of the present low state of efficiency of the plant and the necessity of its immediate reconstruction, and considering that the operating expenses will undoubtedly be substantially increased in the near future on account of higher costs of material and wages, the Commission is of the opinion that such a surplus is not excessive. The company has been leading a hand-to-mouth existence ever since it started and is still in a precarious financial condition. If it is to give first-class, efficient telephone service it must have more revenue.

The Commission is, therefore, of the opinion that the rates applied for, so far as they apply to exchange service, are reasonable and should be approved. The rate of 40 cents per month now being charged for farm line switching service appears to be reasonable for the service performed. It is slightly above the average over the State. While not having analyzed the operating costs in the instant case, the Commission has made studies in a number of other companies and believe the rate of 40 cents to be remunerative for a company of this class. For that reason, the application with respect to the switching rates will be denied.

It is regarded as reasonable and as good telephone practice to establish a gross rate from which a discount can be made for prompt payment. The discount reduces collection expense and by reducing the operating expense tends to reduce the rate paid by the subscriber. A discount of 25 cents per month is customary and will be approved in this case.

ORDER.

It is, therefore, ordered, That the Comstock Independent Telephone Company be, and the same is hereby, authorized

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to charge and collect, until the further order of the Commission, from and after July 1, 1914, the following schedule of rates:

	<i>Gross</i>	<i>Net</i>
Business	\$2 00	\$1 75
Residence	1 50	1 25
Farm	1 50	1 25
Switching service . . . . .	.....	40
Extension sets . . . . .	.....	25

The difference between gross and net rates will be allowed as a discount for prompt payment. The discount on monthly bills shall be allowed if payment is made at the company's office on or before the tenth day of the month for which bill is rendered.

Made and entered at Lincoln, Nebraska, this eighteenth day of June, 1914.

NEW YORK.

Public Service Commission — Second District.

IN THE MATTER OF THE TERMINATION BY TELEPHONE CORPORATIONS OF CONTRACTS IN EXISTENCE SEPTEMBER 1, 1910, PURSUANT TO SUBDIVISION 4 OF SECTION 91 OF THE PUBLIC SERVICE COMMISSIONS LAW.

Case No. 4369.

Dated June 16, 1914.

Discrimination — Termination of All Terminable Contracts for Service at Rates Less than Those on File—Filing of Statement Showing Classification of Contracts under which Less than Present Published Schedule Rate is Charged.

ORDER.

It appearing to the satisfaction of the Commission from memoranda submitted by Edward B. Rogers, chief of the division of telegraphs and telephones, that there are a large number of contracts made by telephone corporations throughout the State for the use of their lines, equipment, or service prior to September 1, 1910; and that the continued furnishing of such lines, equipment, and service under such contracts is in effect a discrimination against telephone users paying the regular standard rates adopted and put in force since September 1, 1910, by such telephone corporations generally throughout the State, and an undue and unreasonable preference and advantage in favor of the persons and corporations with whom such contracts still subsist;

Ordered, 1. That every telephone corporation subject to the jurisdiction of the Commission shall terminate all contracts in force September 1, 1910, for the use of its lines, equipment, or service at a rate less than that duly established for the like use or service in its schedules now

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on file with the Commission, provided that the time such use or service was to continue has expired.

Ordered, 2. That every such telephone corporation forthwith give notice of termination of all such contracts in force September 1, 1910, for the use of its lines, equipment, or service at a rate less than that duly established for the like use or service in its schedules now on file with the Commission, wherein the time such use or service was to continue has not expired but is terminable by notice.

Ordered, 3. That every such telephone corporation file with the Commission on or before the sixteenth day of July, 1914, a copy or description and list of all such contracts in force September 1, 1910, for the use of its lines, equipment, or service, wherein the time such use or service was to continue has not expired, which such telephone corporation claims not to be terminable by the notice provided for in Subdivision 4 of Section 91 of the Public Service Commissions Law.

Ordered, 4. That thirty days is fixed as a reasonable time within which to comply with this order.

AMENDATORY ORDER.

Dated July 8, 1914.

This matter being under further consideration by the Commission, and it appearing that the effective date for compliance with order Clauses 1 and 2 in the order entered herein June 16, 1914, should be postponed to a time to be hereafter fixed, and that meanwhile the said Clauses 1 and 2 of said order should be suspended; and it further appearing that the Commission should be more fully advised concerning the character and number of existing telephone contracts providing for rates less than those fixed in the established schedules of telephone companies;

Ordered, 1. That order Clauses 1 and 2 in the order entered herein on June 16, 1914, be, and the same are hereby, suspended until further order by the Commission, and that such suspension shall apply as effective from June 16, 1914.

Ordered, 2. That order Clause 3 in said order of June 16, 1914, shall remain in force and effect.

Ordered, 3. That every telephone corporation subject to the jurisdiction of the Commission shall file with the Commission on or before September 1, 1914, a statement showing for each of its operating exchanges a classification of the several kinds of contracts under which less than the present published schedule rates is charged and collected, including the number of each class, and such number subdivided to show the number for each year when such contracts became effective, and also the number which by their terms expire in 1914 and each year thereafter; and there shall be appended to such statement a copy of the contract in each class, properly marked to denote the corresponding class specified in the statement.

Ordered, 4. That said statement shall also set forth in reasonable detail the basis for the making of each such class of contracts in the different exchanges and for the continuance of the same since September 1, 1910.

Dated July 8, 1914.

IN THE MATTER OF THE COMPLAINT OF C. H. BENNETT AND
OTHER RESIDENTS OF CAMILLUS, ONONDAGA COUNTY, v.
NEW YORK TELEPHONE COMPANY AS TO RATES.

Case No. 4028.

Decided July 2, 1914.

**Reasonable Rates — Value of Service to Subscribers — Establishment of
New Central Office — Exchange Areas.**

Upon complaint asking for the retention of a rate of \$30.00 for service to both the Solvay and Syracuse exchanges, it appeared that the complainants were farmers situated within the Solvay central office district of the defendant; that prior to 1907, a rate of \$24.00 per year for local service to Solvay and the city of Syracuse was in force, but that during 1907 the rate was advanced to \$30.00. Upon the establishment of a separate central office at Solvay, a rural line rate of \$24.00 for business service and \$18.00 for residence service within the Solvay district was

fixed, and a toll charge of 5 cents per message for each message to Syracuse established. In order to secure unlimited Syracuse service the complainants were required to pay a base rate of \$30.00 plus a mileage charge of \$2.00 for each quarter mile from the municipal limits of Syracuse. The subscribers to this latter class of service were obliged to pay 5 cents per message for talking to those subscribers who had elected to take the local Solvay service. These rates, although adopted in 1907, were first enforced in December, 1913.

It further appeared that the rate of \$30.00 was still in effect in the case of other farmers whose lines entered Syracuse without passing through an intermediate exchange.

The respondent contended that the new rates, the mileage charge and the toll charge were fair on the ground that the value to a subscriber of a service including Solvay and Syracuse was much greater than that of a service to Syracuse only.

Held: That the fact that a separate central office had been interposed between the complainants and the city of Syracuse was not a circumstance which could be held to enhance the value of the rural line service under consideration to the extent claimed by the company, since the range and use of service by the complainants would not be greatly increased by the interposition of this new central office.

That the present tariff distinctly discriminated against the complainants when compared with the rate for similar service to farmers situated in other localities within the Syracuse central office district.

Rate for "Solvay-Syracuse" Service Prescribed.

Considering the central office district established by the telephone company for Solvay as essentially a part of the central office district of Syracuse, and at the same time giving due weight to the value of the two services, the Commission ordered that the respondent put in force a rate of \$33.00 per annum for multi-party residence line service at present afforded within the Solvay central office district, outside of the Solvay base rate area, subscribers to this system to have the designation of "West" exchange and to receive a local service without toll charge, inclusive of both the Solvay central office and the Syracuse city central office.

That said rate for service indicated should remain in force and effect for a period of three years unless superseded or abrogated by further order of the Commission.*

OPINION AND ORDER.

This case was heard at Syracuse March 5, 1914. The complainants are farmers situated within the New York

* Editor's headnote.

Telephone Company's Solvay central office district. Prior to 1907 the farmers in this locality were given a rate of \$24.00 per annum which included local service to Solvay and the city of Syracuse. The rate was then increased to \$30.00 per annum for the farmers in this locality and in other localities surrounding the city of Syracuse similarly situated.

On March 1, 1907, a separate central office was established at Solvay and a rural line rate of \$24.00 for business service and \$18.00 for residence service was fixed for Solvay service alone with a 5-cent toll charge for each message to Syracuse. To secure unlimited Syracuse service the farmers were required to pay the base rate of \$30.00 plus a mileage charge of \$2.00 for each quarter mile from the municipal limits of Syracuse. Under the latter condition the farmers were also required to pay a toll charge of 5 cents per message for talking to those of their neighbors who had elected to take the local Solvay service. It was not until about December 1, 1913, that the telephone company enforced these rates which were adopted with the establishment of the separate Solvay central office.

The complainants desire to retain the \$30.00 rate which will include both Solvay and Syracuse service. Of a total of 33 farmers in this locality 28 have elected to take the \$18.00 rate for local Solvay service and 5 have elected to take the \$30.00 rate for Syracuse service, paying the additional mileage. There are other farmers served direct from Syracuse at the \$30.00 rate where their lines enter Syracuse city direct without passing through another exchange. There are also 8 farmers situated from 3 to 5 miles north of the city of Syracuse who are outside of the Syracuse central office district and who pay the \$30.00 rate plus mileage.

The contention of the telephone company that its present tariff is fair, is based mainly on the theory of the value of the service to the subscriber. It holds that the value to the subscriber of a service including both Solvay and Syracuse is much greater than the service to Syracuse

alone, and that this justifies the mileage charge and the toll charge provided in the present tariff. The fact that a separate central office has been interposed between the complainants and the city of Syracuse is a circumstance which cannot be held as enhancing the value of this rural line service under consideration to the extent claimed by the company. The range and use of service by the complainants would not be so greatly increased on this account. The present tariff distinctly discriminates against the complainants as compared with the rate for similar service to farmers situated in other localities within the Syracuse central office district. For the purpose of this case the Solvay central office must be viewed as a minor factor.

In view of the foregoing the only consistent conclusion is that, in the determination of a fair rate for rural line service in this case, the central office district established by the telephone company for Solvay should be considered as essentially a part of the central office district of Syracuse, at the same time giving due weight to the value of the two services. On the other hand rural line subscribers should not be deprived of the option to take the established local rate for Solvay service.

*In the Matter of the Complaint of the Board of Trustees of the Village of Solvay v. the New York Telephone Company** (Case 3078), the Commission established rates for the residents of Solvay village which give a combination service at a flat rate covering both Solvay and Syracuse. This combination service has been listed in the telephone company's directory under the designation of "West" exchange. A similar designation for rural line service with a corresponding flat rate, giving service to both Solvay and Syracuse, would be entirely consistent. After due consideration,

It is, therefore, ordered, (1) That respondent, New York Telephone Company, be, and is, hereby directed and re-

* Printed in Commission Leaflet 19, at page 42.—Ed.

quired to put in force and effect on or before July 20, 1914, a rate of \$33.00 per annum for multi-party residence line service now afforded within the Solvay central office district, outside of the Solvay base rate area, subscribers to this service to have the designation of "West" exchange and to receive a local service without toll charge inclusive of both the Solvay central office and the Syracuse city central office, and that said rate for the service indicated shall remain in force and effect for a period of three years unless superseded or abrogated by further order of the Commission.

Ordered, (2) That respondent, New York Telephone Company, may amend its tariffs accordingly on one day's notice to the Commission and the public, and respondent shall file with the Commission its notice concerning acceptance and obedience of this order, under Section 23 of the Public Service Commissions Law, on or before July 10, 1914.

IN THE MATTER OF THE COMPLAINT OF WYMAN S. BASCOM
FOR HIMSELF AND THE FIRM OF NEWTON AND HILL *v.*
NEW YORK TELEPHONE COMPANY, RESPECTING RATES
AND SERVICE AT FORT EDWARD AND VICINITY.

Case No. 4293.

Decided July 2, 1914.

**Refusal by Commission to Divide One Existing Local Service Area, Com-
prising Three Towns, into Three Local Service Areas with Toll
Charges between Said Areas — Approval of Exist-
ing Rates as Reasonable — Complaint Dismissed.**

ORDER.

Complaint having heretofore been presented to this Commission by the above named complainants, respecting the rates for telephone service charged by the respondent in Fort Edward and vicinity, and the quality of such service;

and the said New York Telephone Company having made answer to this complaint denying all the material allegations thereof; and the issues thus presented having come on for a hearing before this Commission on the seventeenth day of June, 1914, upon which hearing the said *Wyman S. Bascom* appeared on his own behalf and as legal representative of the firm of Newton and Hill, the other complaining party, and *Mr. George R. Grant* appeared as legal representative of the respondent; and it appearing to the Commission from the arguments and testimony presented at said hearing that in including the communities of Fort Edward, Hudson Falls and Glens Falls in one local service area (which is the basis of the present complaint) the New York Telephone Company is only continuing an arrangement which was in force before the purchase of the Commercial Union Telephone Company by the said New York Telephone Company and not then objected to by complainants, and that this arrangement is by no means in the opinion of the Commission so disadvantageous to the communities affected by it as to warrant the making of an order establishing in the immediate future three local areas with toll charges between them instead of the one now existing without toll charges; and it appearing further that the rates now charged complainants, while higher than those paid to the Commercial Union Telephone Company prior to the purchase of same by the New York Telephone Company, are not discriminatory as compared with the rates in the same neighborhood; and it appearing further that the service now enjoyed by the complainants is superior to that which they received at a cheaper rate from the Commercial Union Telephone Company, in that within the former local area of the Commercial Telephone Company, and within the village of Fort Edward, the number of local stations has been very largely increased under the present ownership; and it appearing to the satisfaction of the Commission, in view of these and other facts which were brought out at the hearing, that the making of an order

immediately reducing the rates now in force in Fort Edward, or changing the local area as now established, would not be warranted at this time;

It is hereby ordered, That the complaint herein be dismissed and that this case be, and the same hereby is, closed on the records of the Commission.

Dated July 2, 1914.

OKLAHOMA.

Corporation Commission.

W. E. CONDREAY *et al.* v. INDEPENDENT TELEPHONE COMPANY
OF CESTOS.

Case No. 2022 — Order No. 830.

Decided July 1, 1914.

**Inadequate Service — Failure to Maintain Equipment — Use of Foreign
Lines at Expense of Subscriber Owing to Condition of Defend-
ant's Lines — Improvident Contract for Management,
Maintenance and Operation of System.**

Upon complaint of failure properly to maintain telephone lines it appeared that on this account the defendant sometimes routed messages over foreign lines at the expense of subscribers although their contracts provided for free service. It further appeared that the defendant's lines were operated under a contract providing for payment by it of a stipulated sum for the management, maintenance and operation of the system.

The defendant was ordered to reconstruct and repair its lines and to make a new contract providing separately for compensation for management and operation and for the necessary funds for labor, equipment and supplies.*

APPEARANCES:

W. E. Condreay and *T. W. Steele*, for complainant.

No appearance for defendant.

OPINION AND ORDER.

Complaint was filed by patrons of the Independent Telephone Company of Cestos, Oklahoma, against that company, alleging, in substance, that the lines are poorly constructed, as much as a mile of pole and wire line being maintained without insulators for a period of more than one year past; that wires are permitted to hang over a span of 40 rods without support; even coming in contact with fence wire and grounding circuits, that defendant employs inexperienced linemen, and complainants pray for an order requiring repairs on the lines of defendant and for adequate service.

* Editor's headnote.

The evidence shows that the Independent Telephone Company of Cestos has lines running over considerable territory adjacent to the town of Cestos; that complainants, who are farmers in that vicinity, have paid for the installation of their own lines to connections with the lines of defendant and have entered into contracts to pay a rental of \$1.00 per month for telephone service.

The evidence shows that the question of rates is not involved in this complaint, but that the patrons of defendant desire adequate service, for which they are willing to pay the present rates assessed and collected; that approximately two-thirds of the time during the past eight years farmers who have connections with the lines of defendant have received very poor service—telephones being out of commission for as much as one week at a time, batteries not being renewed when exhausted, and that defendant, when it cannot route long distance messages over the Independent line for the reason that satisfactory service cannot be had, routes such calls over toll lines, when its contract with its farmer subscribers provides they shall have free service to certain points to which the Independent lines run.

The evidence further shows that many farmer patrons on the lines of defendant have refused to pay the rentals, in an undertaking to induce defendant company to make such repairs of its lines as will afford to its patrons adequate service. The two lines principally complained of are designated as lines No. 101 and No. 107. On line No. 101 there is approximately 40 miles of wire. Line No. 107 runs from Cestos to Seiling.

The evidence further shows that the defendant company contracts with a manager who is a lineman and operator, and under such contract he furnishes all supplies and equipment, keeps up the lines and operates the switchboard for \$90.00 per month.

The Commission finds from the evidence that lines No. 101 and No. 107 are not in such condition as adequate service over them may be afforded to its patrons, and that such lines should be gone over and repaired, where repairs

are necessary, by the installation of new poles and insulators on all poles for wire contacts.

The Commission finds from the evidence that the contract of the defendant for the management, maintenance and operation of its plant is not of the character that would reasonably afford adequate service and such as defendant's patrons are entitled to receive. Where a stipulated price is paid for management, maintenance and operation of a public utility it is very rare that the proper expenditures will be made for maintenance, equipment and repairs. The accounts of management and operation should be separated from maintenance and repair expenses. The defendant should make such arrangements as will provide the proper compensation for management, labor and maintenance and for operation of the switchboard as may be necessary to adequate service. It should also provide separately for the purchase of the necessary equipment and repairs of its lines, taking these items out of the allowance of \$90.00 per month under the contract now in force with its manager.

It is, therefore, ordered, That the defendant, the Independent Telephone Company of Cestos, Oklahoma, shall make repairs of its lines Nos. 101 and 107 and reconstruct such parts thereof as may be necessary to afford to patrons on such lines adequate service by the installation of new poles and by placing on all poles insulators for wire contact.

It is further ordered, That the defendant shall enter into a different arrangement for the management and operation of its plant by providing separately for maintenance and repair expenses and for equipment and supplies; that is, the defendant shall pay for the management of the plant and the operation of the switchboard such compensation as may be necessary to obtain adequate service and shall provide funds for labor, equipment and supplies such as may be necessary to place its plant and lines in proper condition to afford to its patrons such service.

This order shall be in full force and effect on and after July 15, 1914.

Dated at Oklahoma City, Oklahoma, July 1, 1914.

OREGON.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE HOME TELEPHONE AND TELEGRAPH COMPANY OF SOUTHERN OREGON, FOR AUTHORITY TO INCREASE ITS RATES IN THE EXCHANGES OF MEDFORD AND JACKSONVILLE, OREGON.

File U-F—52.

IN THE MATTER OF THE APPLICATION OF THE HOME TELEPHONE AND TELEGRAPH COMPANY OF SOUTHERN OREGON, FOR AUTHORITY TO INCREASE RATES IN THE EXCHANGE OF GOLD HILL, OREGON.

File U-F—53.

IN THE MATTER OF THE APPLICATION OF THE HOME TELEPHONE AND TELEGRAPH COMPANY OF SOUTHERN OREGON, FOR AUTHORITY TO INCREASE RATES IN THE EXCHANGE OF ROGUE RIVER, OREGON.

File U-F—54.

Decided June 3, 1914.

**Increase in Rates—Cost of Reproduction—Accrued Depreciation and
Obsolescence—Exclusion from Valuation of Duplicated Property
and Property Not Used in the Public Service.**

Upon application for an increase in rates, the Commission found that the total cost of reproduction of the properties of the Home company would be \$204,688, that of this amount \$39,094 represented the cost of reproducing duplicated property, that the cost of reproducing the plant, exclusive of such duplications, would be \$165,594 and that, deducting accrued depreciation and obsolescence, and excluding the duplicated property and all property not used or useful in the service of the public, the present value based upon cost of reproduction was \$121,791. The Commission after considering the operating revenue and the operating expenses prescribed a schedule of rates which it found to be just and reasonable.

Reduction of Hours of Service Denied.

Held: That the reduction of service at Gold Hill from twenty-four hours to fourteen hours per day would result in an unreasonable and inadequate service.

That the service afforded should remain at the present standard.

Eight-party Lines — Deterioration of Service.

Held: That the establishment of business and residence eight-party line service was not warranted by existing conditions and would cause a deterioration of the general service.*

On this third day of June, 1914, the above entitled matters came on before the Commission for final determination, having been heretofore fully submitted.

APPEARANCES:

For the applicant, Home Telephone and Telegraph Company of Southern Oregon, *Gus Newbury*, its attorney.

For the city of Medford, Oregon, *B. R. McCabe*, city attorney.

For the city of Gold Hill, Oregon, *Porter J. Neff*, city attorney.

For the town of Rogue River, Oregon, and Rogue River Commercial Club, *O. H. Gillmore*.

FINDINGS OF FACT, OPINION AND ORDER.

The applications herein are for authority to increase rates charged for telephone service in the cities of Medford, Jacksonville, Gold Hill and Rogue River, Oregon, and stations connected with the exchanges located therein. For convenience they are consolidated for the purpose of this order. After the hearings were closed, amended applications in each of the above entitled matters were filed, setting up certain things which it was claimed had transpired subsequent to the filing of the original applications, and for the purpose of making the applications conform to the proof.

* Editor's headnote.

The Commission now being fully advised finds as follows:

1. The applicant, the Home Telephone and Telegraph Company of Southern Oregon (hereinafter called the Home company), is incorporated under the laws of Oregon, and is a public utility, which owns, manages and controls plants and equipment for the conveyance of telephone messages within the cities of Medford, Jacksonville, Rogue River and Gold Hill, Oregon, and the vicinity thereof, as a public utility.

2. The franchise, by virtue of which applicant operates in the city of Medford, was granted by the city council to E. C. Sharpe, February 23, 1909, and was subsequently assigned to the Home company. By Section 5 of the franchise it is provided:

"The maximum rate of telephone rentals to be charged for each telephone service shall be as designated in the following table showing the various kinds of service with their respective rates:

\$3.00 per month for individual main line business service.

2.00 per month for individual main line residence service.

2.50 per month for two-party selective ringing business service.

1.50 per month for two-party selective ringing residence service.

1.25 per month for four-party selective ringing residence service.

"It is hereby understood and agreed that the above table of rates shall be maintained as a permanent agreement until said grantee shall have installed and operated through said exchange not less than 1,000 connected telephones within the city limits of the city of Medford. When the actual number of operating telephones shall have exceeded 1,000 connected services, then said grantee, his associates, executors, successors or assigns, shall have the right to increase the above mentioned monthly rates not to exceed 50 cents per month for each telephone service so connected in service."

By Section 17 of the franchise it was provided in terms that the franchise should not be transferred, directly or indirectly, to the American Bell Telephone Company, or any subsidiary company thereof, or to any telephone company doing a competitive telephone business.

On March 1, 1911, the applicant inaugurated its telephone service in Medford. It now has connected telephone services 50 per cent. in excess of 1,000, and under its fran-

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chise claims it has a right to a rate increase of 50 cents per month for each telephone service so connected in service.

3. On June 5, 1911, the city council of Gold Hill granted to E. T. Charlton, or assigns, a franchise which has since been assigned to the Home company, permitting the occupancy of the streets, alleys and thoroughfares of said city with poles, wires and appliances necessary for the furnishing of telephone, telegraph and messenger service at the following rates:

- \$2.00 per month for individual main line business service.
- 1.50 per month for four-party line business service.
- 1.25 per month for eight-party line business service.
- 1.50 per month for individual main line residence service.
- 1.25 per month for four-party line residence service.
- 1.00 per month for eight-party line residence service.

On August 1, 1911, the Home company inaugurated telephone service in Gold Hill at the above mentioned rates.

4. In 1910, the Home Telephone and Telegraph Company inaugurated a local exchange telephone service in Rogue River at the following rates:

- \$2.00 per month for individual main line business service.
- 1.50 per month for four-party selective ringing business service.
- 2.00 per month for individual main line residence service.
- 1.50 per month for eight-party selective ringing residence service.
- 1.50 per month for eight-party selective ringing suburban service.

The Home company, however, had no franchise in Rogue River.

5. About the same time the applicant constructed a telephone exchange in Grants Pass, Oregon. All of the exchanges named were connected by toll lines, owned and operated by the applicant.

6. Prior to July 1, 1912, The Pacific Telephone and Telegraph Company (hereinafter called the Pacific company), was engaged in the operation of telephone exchanges in Medford, Jacksonville, Gold Hill and Grants Pass, Oregon, with a toll station in Rogue River, Oregon, and toll lines

connecting all of the exchanges, and also connected with other stations and exchanges reached by the Pacific company. The telephone exchanges of the Home company and the Pacific company were in active competition, both as respects local exchange service and the toll service between exchanges.

7. On or about July 1, 1912, an arrangement was made between the Home company and the Pacific company whereby there was transferred to the Home company the local exchange plants of the Pacific company in Medford and Jacksonville, and in Gold Hill. The Home company thereupon became the sole occupant of the telephone field in Medford, Jacksonville, Gold Hill and Rogue River, in so far as local service was concerned, and withdrew its local exchange in Grants Pass. Thereupon the Home company ceased the operation of its various toll lines in Jacksonville and Josephine Counties, and connected its various exchanges with the toll system of the Pacific company, under a traffic arrangement between the companies. The Home company connected the exchanges of the Pacific company in Jacksonville and Medford with the exchange of the Home company in Medford, and thereafter operated such exchanges jointly with free switching between them.

Thereafter there was effected a consolidation of the local exchange plants of the Pacific company in Medford and Jacksonville, so transferred to the Home company, with the Home company's local exchange plant in Medford; and the local exchange plant of the Pacific company in Gold Hill was consolidated with the local exchange plant of the Home company located at that point. The Pacific company thereupon discontinued its toll station in Rogue River and connected its toll lines with the local exchange of the Home company at that point.

8. At the date of consolidation the original cost of the various plants of the Home company as set out in its books, including toll line that was afterwards dismantled, and including all expense of organization, promoter's and contractor's profits, was \$142,981.90. The original cost of the

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Pacific company's plant in Medford and Jacksonville, as transferred, is estimated to have been \$117,682.

9. The consideration received by the Pacific company for the transfer of its plant to the Home company was as follows: Forty-nine bonds of the Home company, with a par value of \$1,000 each, \$49,000; 360 bonds of the Home company of a par value of \$100 each, \$36,000; 6,900 shares of the capital stock of the Home company of a par value of \$207,000, at an agreed value of \$42,182, and the Pacific company paid in cash \$9,500.

10. The effect of the transfer was such that the Pacific company withdrew from the local exchange service in Medford, Jacksonville, Gold Hill and Rogue River, and the Home company withdrew from the local exchange service in Grants Pass and from toll line service entirely; and by the transfer to it of more than a majority of the capital stock and bonds of the Home company, the Pacific company acquired and now has the control of the Home company, but the title to the exchanges now operated in Medford and Jacksonville, Gold Hill and Rogue River, remains in the Home company.

11. At the time of the consolidation, the rates of the Pacific company were as follows:

Medford:

- \$2.50 per month for one-party business service, wall equipment.
- 2.00 per month for two-party business service, wall equipment.
- 2.00 per month for one-party residence service, wall equipment.
- 1.50 per month for two-party residence service, wall equipment.
- 1.25 per month for four-party residence service, wall equipment.
- With an additional charge of 25 cents per month for portable equipment.

Jacksonville:

- One-party business, unlimited service, wall equipment \$2.50 per month.
- Four-party business, unlimited service, wall equipment 1.50 per month.
- One-party residence, unlimited service, wall equipment 2.50 per month.
- Four-party residence, unlimited service, wall equipment 1.50 per month.
- With an additional charge of 50 cents per month for portable equipment.

Since the consolidation the rates herein set out have applied in Medford and Jacksonville.

12. The applications herein as originally filed asked for authority to increase the rates charged by the Home company to the following:

Medford:

Business, one-party, from \$2.50 per month to \$3.50 per month.
Business, two-party, from \$2.00 per month to \$3.00 per month.
Residence, one-party, from \$2.00 per month to \$2.50 per month.
Residence, two-party, from \$1.50 per month to \$2.00 per month.
Residence, four-party, from \$1.25 per month to \$1.75 per month.
Suburban, eight-party, from \$1.50 per month to \$2.00 per month.
Farmer switching service from \$3.00, \$4.20, \$5.00, \$5.40, \$7.20 per year to \$8.40 per year.

Jacksonville:

One-party business, unlimited service, from \$2.50 to \$3.50 per month.
Two-party business, unlimited service, from \$1.50 to \$3.00 per month.
One-party residence, unlimited service, from \$2.50 to \$2.50 per month.
Four-party residence, unlimited service, from \$1.50 to \$1.75 per month.
Suburban eight-party unlimited service, from \$1.50 to \$2.00 per month.
Farmer switching service, \$3.00 to \$8.40 per month.

Gold Hill:

Business, one-party, from \$2.00 per month to \$2.50 per month.
Business, four-party, from \$1.50 per month to \$2.00 per month.
Business, eight-party (eliminated).
Residence, one-party, from \$1.50 per month to \$2.00 per month.
Residence, four-party, from \$1.25 per month to \$1.75 per month.
Residence, eight-party, from \$1.00 per month to \$1.50 per month.
25 cents per month additional for desk equipment.

Rogue River:

Business, one-party, from \$2.00 per month to \$2.50 per month.
Business, four-party, from \$1.50 per month to \$2.00 per month.
Business, eight-party (eliminated).
Residence, one-party, from \$2.00 per month to \$2.00 per month.
Residence, four-party, \$1.75 per month.
Residence, eight-party, from \$1.50 per month to \$1.50 per month.
Suburban, eight-party, from \$1.50 per month to \$1.75 per month.
25 cents per month additional for desk equipment.

The applications as amended ask for further increases than those prayed for in the original applications, as follows:

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Medford:

Business, unlimited one-party, selected service, from \$2.50 per month to \$4.00 per month.

Business, unlimited two-party, selected service, from \$2.00 per month to \$3.50 per month.

Suburban residence, ten-party, selected service, from \$1.50 per month to \$2.00 per month.

Farmer line service, unlimited party line switching business, from \$3.00, \$4.20, \$5.00, \$7.20, \$8.40 to \$15.00 per year.

Jacksonville:

Business, unlimited service, one-party, selected service, from \$2.50 per month to \$4.00 per month.

Business, unlimited service two-party, selected service, from \$1.50 per month to \$3.50 per month.

Suburban business, ten-party, selected service, from \$1.50 per month to \$2.50 per month.

Suburban residence, ten-party, selected service, from \$1.50 per month to \$1.75 per month.

Farmer line service, unlimited party line switching business, from \$3.00 to \$15.00 per year.

Gold Hill and Rogue River:

Eliminate all party line business service.

Increase switching service rate for business subscribers on farmer's line to \$12.00 per year.

Reduce hours of service from 24 hours per day to 14 hours per day — 7 A. M. to 9 P. M.

13. The cost of reproducing the properties of the Home company as of September 15, 1913, including working capital to the amount of \$2,800, and making an estimate of the cost of organization and of interest during construction, would be \$204,688. This amount represents the cost of reproducing the properties of the Home company in normal new and usable condition, without making any deduction on account of depreciation which has accrued, or for elapsed life which has taken place, or on account of duplication of portions of the plant not used or useful in the service of the public, which have arisen by reason of the fact that the plant is the consolidation of two former competing systems. The cost of reproducing that portion of the property which is so duplicated would be \$39,094, and

the cost of reproducing new the plant omitting such duplications would be \$165,594.

14. The cost of reproducing the various exchanges of the Home company as of new, omitting such duplication, distributed by exchanges, would be as follows:

Medford	\$146,535 00
Jacksonville	9,030 00
Rogue River	7,765 00
Gold Hill	2,264 00
	<hr/>
	\$165,594 00
	<hr/>

The various exchanges and plants of the Home company, however, have depreciated, and if the amount of such depreciation, as represented by the proportion of the life, of each unit of the plant, which has already elapsed, as compared with the total probable life, be deducted from the reproduction cost as of new, then such reproduction cost less depreciation of all of the properties of the applicant would be \$139,380, distributed to exchanges as follows:

Medford	\$126,067 00
Jacksonville	5,352 00
Rogue River	6,186 00
Gold Hill	1,775 00
	<hr/>
	\$139,380 00
	<hr/>

15. The existing plant of the Home company, after deducting the duplications in Medford, exceeds present needs and such future development as reasonably can be foreseen, to the amount of \$19,992, reproduction cost new, and \$17,589, after deducting depreciation.

Such property is not now used or useful in the service of the public, and there is no probability that it will be used or useful in the service of the public during its life or such period for development in the future as now appears to be reasonable. The reproduction cost, lessened by such depreciation as has accrued, and such elapsed life

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as has taken place, of the property of the Home company in Medford is \$108,478; in Jacksonville is \$5,352; in Rogue River is \$6,186; and in Gold Hill is \$1,775.

16. By reason of the change of the title of the properties, their merger into the consolidated exchanges, the subsequent abandonment and rebuilding of portions, and the existing duplication and overdevelopment of the remaining portions of the plant of the Pacific and Home companies, now operated by the Home company, the Commission is unable to find definitely the original cost of the portions of such property now actually used and useful in the service of the public.

17. The revenue from operation, operating expenses and operating income of the Home company from the consolidated plants for the six months ending June 30, 1913, compared with operating revenues, expenses and income of the Pacific company and the Home company combined for the six months ending June 30, 1912, immediately prior to the consolidation, were as follows:

<i>Revenue:</i>	<i>Combined Pacific and Home, six months ending June 30, 1912</i>	<i>Home company, six months ending June 30, 1912</i>
Exchange service		
Medford	\$19,894 73	\$16,484 16
Jacksonville	1,201 99	1,130 80
Gold Hill	497 95	644 05
Rogue River	628 15	758 55
TOTAL	\$22,222 82	\$19,017 56
Toll service		
Medford	\$1,206 78	\$303 93
Jacksonville	133 36	57 01
Gold Hill	210 83	81 44
Rogue River	134 50	80 81
Ashland	29 75	.....
TOTAL	\$1,715 22	\$523 19
TOTAL REVENUE	\$23,938 04	\$19,540 75
<i>Operating Expenses:</i>		
Operation		
Salaries and wages	\$3,930 00	\$5,244 15
Other expenses	3,083 54	1,885 50
	\$7,013 54	\$7,129 65
Maintenance		
Repairs	\$2,407 38	\$2,275 52
Station removals and changes	1,539 05	2,630 88
	\$3,946 43	\$4,906 40
General expenses		
Salaries and wages	\$2,277 50	\$2,030 00
Insurance	103 73	153 92
Other expenses	4,131 77	936 39
	\$6,513 00	\$3,120 31
TOTAL OPERATING EXPENSES..	\$17,472 97	\$15,156 36
OPERATING INCOME	\$6,465 07	\$4,384 39

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The operating revenues of the Home company have decreased since the consolidation, as compared with the revenues of the consolidated units, but the operating expenses have not been correspondingly diminished.

18. The applicant claims that by reason of increased wages it must pay to certain of its employees, due to their demands, and to the orders of the Industrial Welfare Commission of the State of Oregon, its operating expenses will be increased approximately \$1,524 per year in Medford and Jacksonville, and \$781 in Gold Hill, and \$961 in Rogue River.

The Commission finds, however, that by the practice of economy in organization and operation and by the reduction of present unduly and unnecessarily heavy general expense, it will be possible for the Home company to recoup in a large measure such claimed additional expense.

18. The annual amount of taxes to be met by the company is \$3,624.50. The annual depreciation of the plant of the company used and useful in the service of the public is \$6,275.

19. If the Commission should grant authority for the Home company to increase its rates to the extent prayed in its original or amended applications, Home company would lose a large number of subscribers who are now patrons of its exchanges, without gaining any subscribers in place thereof; and the effect would be to decrease the number of subscribers connected, to diminish the value of service to the existing subscribers and not to increase the gross or net revenues of the company in proportion with the increase in rates. It is not possible, either by the schedule of rates applied for, or by any schedule which the Commission can name, to yield to the company its present unduly high operating expenses, its taxes, depreciation, and any substantial return upon the investment, for the reason that any rates which would yield such return would be so large that the same would exceed the value of the service to the patrons and would be unreasonably high, and the applicant would in consequence lose so many sub-

scribers that neither its gross nor net revenues would be increased.

20. Just and reasonable rates for the applicant to charge for its service to the public are the following:

<i>Rates per month except as otherwise indicated</i>	<i>Exchanges</i>			
	<i>Medford</i>	<i>Jacksonville</i>	<i>Gold Hill</i>	<i>Rogue River</i>
Business one-party.....	\$3 00	\$3 00	\$2 50*	\$2 50*
Business two-party.....	2 25*	2 25		
Business four-party.....		1 75*	1 75*	1 75*
Business ten-party, semi-selective, suburban.....		2 00*		
Residence one-party.....	2 00*	2 00	2 00*	2 00*†
Residence two-party.....	1 75*			
Residence four-party.....	1 50*	1 50*	1 50	1 50
Residence eight-party, suburban.....	1 75*	1 75*		1 50*
Residence ten-party, semi-selective, suburban.....		1 50*		
	<i>Per year</i>	<i>Per year</i>	<i>Per year</i>	<i>Per year</i>
Business party line, farmer switching..	12 00	12 00	6 00	6 00
Residence party line, farmer switching..	7 20	7 20	3 00	3 00

* Add 25 per cent. per month to rate indicated for portable desk telephones.

† Present rate.

Other rates, as named in the company's tariffs on file with the Commission, to remain unchanged.

21. The application, as amended, contemplates a reduction of the service in Gold Hill from 24 hours to 14 hours per day. Such diminished service would be unreasonable and inadequate and the service afforded should remain at the present standard.

22. The Home company, in its amended application, asks for the establishment of business and residence eight-party line service in Medford and Jacksonville. The Commission finds no facts exist to warrant the establishment of such service, and that the general service would be deteriorated and rendered inadequate should such party lines be generally put into service.

It is, therefore, ordered, That leave be granted applicant to increase its rates as specified in Paragraph 20 hereof, and not otherwise, and that in all other respects the application be denied.

Dated Salem, Oregon, June 3, 1914.

PENNSYLVANIA.

The Public Service Commission.

IN THE MATTER OF THE RIGHT OF A TELEPHONE COMPANY TO
INDICATE WHAT ATTACHMENTS SHALL BE PLACED UPON
ITS INSTRUMENTS INSTALLED FOR PATRONS.

File No. 204.

Decided June 20, 1914.

Rules and Regulations—Attachments of Foreign Appliances by Patrons.

INFORMAL ORDER.*

After a careful consideration of the facts in your complaint against the Bell Telephone Company of Pennsylvania, I have been directed to advise you that the Commission is of the opinion that in order to insure proper service and transmission of all messages, the Bell Telephone Company has a right to indicate what attachments shall be placed upon their instruments installed for patrons, and the Commission does not see its way clear to compel a change in the rules and regulations governing such matters on the part of the telephone company, nor can the Commission compel a telephone company to have foreign appliances placed upon its instruments.

* Informal ruling contained in a letter of the Commission, dated June 20, 1914, addressed to Messrs. Charles F. Felin and Company, Old York Road and Butler Street, Philadelphia, Pennsylvania, and issued over signature of the Secretary of the Commission.—Ed.

SOUTH DAKOTA.

Board of Railroad Commissioners.

**IN THE MATTER OF THE INVESTIGATION INTO THE RATES,
CHARGES AND PRACTICES OF THE HOMESTEAD TELEPHONE
COMPANY.**

Complaint No. 1647.

Decided July 7, 1914.

Filing of Contracts with the Board.

Ordered, That the Homestead Telephone Company reduce all of its schedules of rates and its rules and regulations, and all of its contracts, agreements or understandings with cities, towns or villages, or any other telephone companies, to writing and file the same in the office of the Board of Railroad Commissioners.

Rental Basis for Telephone Service.

Ordered, That the Homestead Telephone Company fix and establish a schedule of rates for the rental of telephone instruments and telephone service in connection therewith, and file the same in the office of the Board, and abandon its method of levying an assessment for the maintenance and upkeep of the plant.

Service to Stockholders and Non-stockholders.

Ordered, That the Homestead Telephone Company charge to all subscribers without reference to stock ownership, the same rental rate for the rental of telephone instruments and for telephone service in connection therewith, and grant telephone service to all persons in the community which it serves who shall make application therefor.

Physical Connection — Switching of Messages — Privacy of Communication.

Ordered, That the Homestead Telephone Company install at the point of intersection where telephone messages are transferred from its lines to the lines of the Elm Springs and Wasta Telephone Company by a man walking from one telephone to another and repeating the message, a switch, and so connect its wires and the wires of the Elm Springs company with said switch that when persons on either line desire to converse with persons on the other line, direct communication may be established through the switch without the intervention or intermediation of a third person.*

* Editor's headnote.

FINDING AND CONCLUSIONS.

This is a proceeding instituted by the Board of Railroad Commissioners of this State for the purpose of conducting an investigation into the rates, charges and practices of several telephone companies located at and in the vicinity of Wasta, South Dakota. A hearing was held at Wasta before Commissioner Smith on April 28, 1914, at ten o'clock A. M. The Homestead Telephone Company appeared by *Mr. Ernest Carleton*, its president, who was sworn and examined.

From the testimony of Mr. Carleton it appears to the satisfaction of the Commission that it has some agreements or understandings and some contracts with other telephone companies, which contracts have never been reduced to writing and consequently have not been filed in this office, and the attention of the company should, therefore, be directed to Sections 4 and 6 of the telephone law, which require that all rates and all contracts between it and any municipality, telephone company or companies must be filed in the office of the Board of Railroad Commissioners. Inasmuch as this statute, as well as Section 10 of Chapter 207 of the Laws of this State, require that all contracts and all schedules of rates be filed in the office of the Board of Railroad Commissioners, it necessarily follows that the statute refers to and requires that all such contracts must be in writing, as otherwise they could not be filed. An order should, therefore, be made and entered in this proceeding requiring the Homestead Telephone Company to reduce all of its contracts with any cities, towns or villages and any telephone company or companies to writing, and to file these contracts in this office. It is not meant by the statute that telephone companies shall be required to enter into written contracts with its subscribers who rent telephone instruments from it, consequently it will not be necessary to have such contracts filed.

It also appears from the evidence of Mr. Carleton that this company is transacting business on the assessment

basis and that an assessment of \$3.00 per annum is levied for the purpose of taking care of the operating expenses, and that persons in the vicinity and community served by this telephone company have expressed their desire to receive telephone service from this company, but the company has thus far failed and, perhaps, refused to furnish any telephone service to any persons who are not stockholders in it. Mr. Carleton says, in his testimony, that while he might have heard and might know of applicants for telephone service, yet no "official notice" had ever been received by him. Just what he means by "official notice" is not entirely plain, but it does satisfactorily appear from his testimony that he knows there are persons in his community who want telephone service and want it from his company, and it is, therefore, the duty of this company to furnish this telephone service. This company should abandon its method of levying an assessment of a specified sum to take care of the operating expenses and should furnish telephone service to such persons in the community which it serves as desire to have telephone service, and a rental rate should be fixed of so much per month or per annum, and this rental rate should be charged to all persons, to all stockholders and persons who are not stockholders alike.

The Board also finds from the testimony of Mr. Carleton that at the point where messages are transferred from this line to the Elm Springs and Wasta Telephone Company's lines, the transfer is made by a man walking from one 'phone to another and repeating the message. It does not appear from the transcript where this switching occurs or the name of the man who does the switching. It goes without saying that there can be no secrecy or privacy in the transmission of telephone messages made in the manner outlined by Mr. Carleton in his testimony. If all of the switching in this State was done on this basis, telephone service would be crude beyond conception. There should be a certain degree of privacy in the transmission of telephone messages, and not only should there be

privacy but an effort at accuracy, and there can be no accuracy in the transmission of a message from one line to another in the manner indicated. An order should be made and entered in this proceeding requiring the Homestead Telephone Company to install a switch where these messages are transferred in this manner and connection should be made between the two lines by means of a switch, so that persons wishing to talk from one line to the other be afforded an opportunity to talk to each other direct and not through the intervention of a third person. . .

Let an order be made and entered in this proceeding directing the Homestead Telephone Company to reduce all of its schedules of rates, rules and regulations and all of its contracts with cities, towns or villages or other telephone companies or corporations to writing and to immediately file all such schedules, rules, regulations and contracts in the office of the Board of Railroad Commissioners of this State, and requiring said telephone companies to install a switch so that at the point where messages are transferred from its lines to the lines of the Elm Springs and Wasta Telephone Company, it may be done by means of the switch so as to enable persons to communicate or talk with each other direct, and requiring and commanding said telephone company to fix and establish a rental rate at a certain sum per month or per annum for the rental of telephone instruments and telephone service in connection therewith, and to furnish telephone service to all persons requesting the same and to charge the same rate to all subscribers regardless of whether they are stockholders in the company or are not stockholders.

ORDER.

In this cause the Board having made an investigation, filed its findings and conclusions, and being fully advised,

It is, therefore, ordered, considered and adjudged, That the Homestead Telephone Company be, and it hereby is, required and commanded to reduce all of its schedules of

rates and its rules and regulations, and all of its contracts, agreements or understandings with cities, towns or villages or any other telephone companies to writing and to file the same in the office of the Board of Railroad Commissioners.

It is further ordered, considered and adjudged, That the said Homestead Telephone Company be, and it hereby is, required and commanded at the point of intersection where telephone messages are now transferred from its lines to the lines of the Elm Springs and Wasta Telephone Company by a man walking from one 'phone to another and repeating the message, to install a switch and to so connect its wires and the wires of the Elm Springs and Wasta Telephone Company with said switch that when persons on either line desire to converse with persons on the opposite lines, the person operating the switch may make a direct connection through the switch so that the persons desiring to converse may do so directly with each other and without the intervention or intermediation of a third person.

And it is further ordered, considered and adjudged, That the said Homestead Telephone Company be and hereby is commanded and required to fix and establish a schedule of rates for the rental of telephone instruments and telephone service in connection therewith, and to file the same in the office of the Board of Railroad Commissioners, and to abandon its method of levying an assessment for the maintenance and upkeep of the plant, and to charge to all of its stockholders and non-stockholders and, in fact, to all subscribers without reference to stock ownership, the same rental rate for the rental of telephone instruments and for telephone service in connection therewith, and to grant telephone service to those persons in the community which it serves who make application therefor.

The Homestead Telephone Company is given sixty days in which to comply with this order.

Done in regular session at the city of Pierre, the capital, on this seventh day of July, 1914.

IN THE MATTER OF THE INVESTIGATION INTO THE RATES,
CHARGES AND PRACTICES OF THE CHEYENNE VALLEY
ELECTRIC TELEPHONE COMPANY OF WALL, SOUTH
DAKOTA.

Complaint No. 1647.

Decided July 7, 1914.

Lower Rates for Party Line than for Individual Line Service.

Held: That the Cheyenne company should discontinue its practice of charging the same rate for individual and party line service inasmuch as individual service is more valuable than service accorded a subscriber on a party line.

Extension of Lines to Intending Subscribers Ordered.

Held: That under the statutes of South Dakota, all telephone companies are common carriers and as such must furnish service to the entire community in which they are transacting business.

That the Commission will probably order a company which is attempting to furnish telephone service to a given community, to extend its lines a reasonable distance to afford proper service to subscribers or persons desiring to become subscribers.

That the question of what is a reasonable distance must be determined in each case.*

REPORT.

A hearing in this cause was held before Commissioner Smith at Wasta, South Dakota, on the twenty-eighth day of April, 1914. The Cheyenne Valley Electric Telephone Company, or the Cheyenne Valley Electric Company, appeared by *Mr. T. E. Knapp*. This telephone company operates an exchange at Wall and connects at Pedro with the Red Owl Telephone Company. Its business and residence rates are all the same without regard to whether the service is given on a private wire or one-, two-, three- or four-party line. In the *Salem Telephone* case,† this Commission held that the rates for private wire or main line telephone and the rates for one-, two-, three- and

* Editor's headnote.

† *Salem Commercial Club v. Salem Telephone Company* printed in Commission Leaflet No. 22, at page 996.—Ed.

four-party line service should not be the same, that the service afforded by a private wire or main line 'phone was more valuable than the service accorded to a subscriber where the line to which his instrument was attached was connected also with one, two or three other telephone instruments. There is a great difference in the class of service furnished by the main line or private wire and the party line, and different rates should be provided for the different classes of service.

At the hearing Mr. Knapp did not appear to be informed as to what was the proper rate for an extension set. It seems that this company has in service one extension set, but it does not appear from the record whether this is simply a ringing extension or a ringing and talking extension. In some instances rates have been filed in this office for 50 cents for a ringing extension, and in some cases a fee of 75 cents and in yet others a fee of \$1.00 for the ringing and talking set; this rate of 50 cents for the ringing extension set and 75 cents or \$1.00 for the ringing and talking extension set is a monthly rental.

It also appears from the testimony of Mr. Knapp that where the distance is reasonable and the intending subscriber furnishes the poles and sets them, the company will put on the wire and put in telephones provided the intending subscriber pays his rental for one year in advance. The requirement is not very plain as to whether or not the intending subscribers are required to become stockholders in the company, but it is assumed from the fact that they offer to furnish telephone service to persons who will furnish the poles and set them and pay telephone rental for one year in advance that the stock ownership is not a condition precedent with this company to the furnishing of telephone service. In several cases this Commission has ruled that a telephone company will not be permitted, under the statute, to require any intending subscriber to furnish the whole or any portion of the equipment, and while no decision has yet been rendered by this Commission on the subject it is more than probable that where the distance is reasonable and the tele-

phone company is attempting to furnish telephone service in a given community, this Commission will in a proper case require the telephone company to afford proper telephone service to subscribers or persons desiring to become subscribers who reside within the community attempted to be served. Under the statutes of this State all telephone companies are common carriers and as such they must furnish service to the community in which they are transacting business. What is a reasonable distance in every case must be determined from all of the circumstances in the particular case. There is no fixed and established rules as to what constitutes a reasonable distance, and where that question is presented to the Board it must be determined from the facts in the case then in controversy.

Done in regular session at the city of Pierre, the capital, on this seventh day of July, 1914.

IN THE MATTER OF THE INVESTIGATION INTO THE RATES,
CHARGES AND PRACTICES OF THE RED OWL TELEPHONE
AND ELECTRIC COMPANY OF MARCUS.

Complaint No. 1647.

Decided July 9, 1914.

Approval of Present Practices of Company.

REPORT.

SMITH, *Commissioner*:

The hearing in this case was conducted before Commissioner Smith at Wasta on the twenty-eighth day of April, 1914. The Red Owl Telephone and Electric Company appeared by *Mr. C. E. Dowling*, its manager.

It appears from the testimony in this case that this telephone company adopts the practice of furnishing the entire equipment for intending subscribers if the place of residence of the intending subscriber is at a reasonable distance from its lines, and that it charges a rate of \$1.50 per month, payable quarterly in advance, and while it gener-

ally requires an intending subscriber, where it is compelled to extend its lines, to agree to rent a telephone for a period of one year, yet it has never entered into a written contract to that effect.

We believe that this practice is in full accord with the purport of the statutes of this State regulating the telephone business, and it meets with our approval.

At the hearing Mr. Dowling requested that he be advised as to whether or not it was legal to make a discount to subscribers for the payment of telephone rent in advance.

In several cases this Commission has decided that where a telephone company desires, in order to facilitate the collection of its telephone rentals, to offer a discount of a certain per cent., or a certain number of cents from its monthly telephone rental, that the rate filed should be for the full telephone rental to be charged with a statement or foot note to the effect that in case the rent is paid in advance, or on or before a certain date, to be named, that a discount of so many cents would be allowed from the monthly rental.

This practice seems to be fully in accord with the practice of other Commissions having the regulation of the telephone business, and is, in our opinion, good telephone practice.

Dated at Pierre, South Dakota, on this ninth day of July, 1914.

IN THE MATTER OF THE INVESTIGATION INTO THE RATES,
CHARGES AND PRACTICES OF THE ELM SPRINGS AND WASTA
TELEPHONE COMPANY.

Complaint No. 1647.

Decided July 11, 1914.

Abolition of Requirement that Persons Desiring Service Become Stockholders — Elimination of Discrimination between Stockholders and Non-stockholders — Discontinuance of Assessment on Stockholders.

Ordered, That the Elm Springs and Wasta Telephone Company cease from the practice of requiring persons desiring service to become stockholders in the company;

That said company furnish telephone service, without any other consideration or condition than the payment of a monthly rental, to all applicants in the community served by it;

That said company charge the same rates to all subscribers whether stockholders or non-stockholders;

That the said company cease levying an assessment on its stockholders for the purpose of paying operating expenses and maintenance.

Physical Connection — Jurisdiction of Board — Point of Connection.

At the request of the company, the Board outlined the procedure to be followed under the South Dakota law in order that the company might obtain physical connection with the Nebraska Telephone Company.

Held: That the Board has jurisdiction to order physical connection, and under the statute probably has authority in case a telephone company is operating an exchange within a city or town and a rural party line desires connection therewith, to order the company operating the local exchange either to connect with the lines of the rural company at the corporate limits of the city, or to make the connection at the exchange of the local company.

Extension of Lines to Serve Prospective Subscribers.

Held: That when it is necessary in order to afford telephone service to an intending subscriber for the telephone company to extend its lines, the terms and conditions upon which the extension shall be made and the service granted, must be decided from the facts presented in the particular case.*

OPINION.

SMITH, Commissioner:

The hearing in this investigation was held before Commissioner Smith at Wasta on the twenty-eighth day of April, 1914. The Elm Springs and Wasta Telephone Company appeared by *Mr. R. E. Huddleson*, secretary, *Mr. C. B. Hunt*, treasurer, and *Mr. D. C. Gillam*, one of its directors.

From the record in this case it appears that the principal place of business of the Elm Springs and Wasta Telephone Company is at Elm Springs, where it maintains a switch connecting its different lines running to Harwood, White Owl, Boneita Springs, Wasta and Creighton, with branch lines to Fisher Springs. The Elm Springs and

* Editor's headnote.

Wasta Telephone Company has 78 subscribers and is conducting its business on the assessment and not on a rental basis; that is, an assessment is made against each stockholder for an amount which, in the opinion of the Board of Directors, is sufficient to pay the operating expenses and the maintenance and upkeep of the plant. It also makes a practice of requiring persons who desire to become subscribers on their lines to purchase stock in the company as a condition precedent to the furnishing of telephone service and refuses to furnish telephone service to persons who are not stockholders in the company.

This Commission has frequently held that all telephone companies doing business in this State must abandon the assessment basis and go on to the rental basis. Under the statute all telephone companies are common carriers, and the statute applies to all telephone companies alike without regard to the manner of organization or by whom operated. All are common carriers and under the telephone law all are subjected to regulation, and jurisdiction is conferred upon, and this Commission is charged with the duty of enforcing the statute. Because of the fact that the Elm Springs and Wasta Telephone Company, with all other telephone companies doing business in the State, whether owned by individuals, corporations or co-partnerships, are common carriers and as such common carriers subject to regulation, it must furnish telephone facilities to all comers on the same basis at the same rates for the same class of service, and there must be no distinction between stockholders and those who are not stockholders. In order that this regulation may be carried into effect, it is necessary, therefore, that the assessment basis under which the Elm Springs and Wasta Telephone Company levies an assessment on its stockholders for the purpose of defraying its operating expenses and the maintenance and upkeep of the plant, must be abandoned and all subscribers, including not only stockholders but persons who are not stockholders must pay for the rental of telephone

instruments and telephone service in connection therewith on a rental basis of a certain designated sum per month.

In several cases this Commission has decided that a telephone company is not permitted under the statute of this State to compel an intending subscriber either to build any part of a line or to furnish any part of the equipment or to become a stockholder in the company as a condition precedent to the furnishing of telephone service. While it must be distinctly understood that the Board of Railroad Commissioners has no jurisdiction over the issuance and sale of stocks or bonds by telephone companies or other common carriers, it must likewise as distinctly be understood that it will not tolerate any practice by any telephone company which requires a person desiring to receive telephone service to become a stockholder or to build a portion of the line, or to buy a part of the equipment as a condition precedent to receiving telephone service. At common law a common carrier is bound to treat all persons alike and to afford the same class of service to all persons at the same rates. The proper basis upon which to operate a telephone company and which will afford to all patrons alike, whether they be stockholders or otherwise, telephone service, is the rental basis fixed at a certain specified sum per month for the rental of telephone instruments and at certain rates for the transmission of toll messages, and to charge such rental rates and message rates for the transmission of toll messages to all persons. The rate should be fixed at a sum sufficient to defray all operating expenses and the maintenance and upkeep of the plant and to provide a certain amount to take care of the depreciation of the plant and to take care of a dividend on the stock. The only advantage which a stockholder has over a person who is not a stockholder is that he is entitled to a return in the form of a dividend on the stock; he is not in any manner entitled to other or different rates than any other persons. While, as above stated, the Board of Railroad Commissioners of this State has no jurisdiction over the issuance or sale of stocks or bonds, it must be clearly understood

by all telephone companies in this State that this Commission will not permit any telephone company to require a person who desires to become a patron or subscriber as a condition precedent to the furnishing of telephone service to him by the rental to him of a telephone instrument that he become a stockholder in the company.

On Pages 47 and 48 of the record in this case, the Elm Springs and Wasta Telephone Company desired that they be informed as to the method to be pursued to obtain connection with the Nebraska Telephone Company for the transmission of long distance messages and what forms of contract would be a reasonable contract to make with the Nebraska Telephone Company for that service and what remuneration should be paid to the druggist in whose store the switch of the Nebraska Telephone Company's lines is maintained in Wasta. In answer to this question, this Commission is of the opinion that the procedure pointed out by the statute of this State to be followed by telephone companies desiring connection with other telephone companies is to first make a demand upon the telephone company with which the connection is desired for the connection, and then in case of the failure of that telephone company to afford connection, to file a complaint with the Board of Railroad Commissioners and submit the cause to that body for consideration and decision. It appears from the record in this case that the Elm Springs and Wasta Telephone Company does not maintain a central at Wasta and that the Nebraska Telephone Company does maintain connection, through a switch placed in a drug store at Wasta, with other telephone lines, and that the druggist who attends to and operates this switch receives a fee of 5 cents each time he answers the 'phone and 15 per cent. of all money taken in. If the Elm Springs and Wasta Telephone Company were connected with it, it would be entitled to charge, collect and receive a terminal fee of 5 cents for each message originating or terminating on its exchange or lines connected therewith, providing that the toll line company did not also maintain an exchange at

the same point. This Commission held in the case of the *Farmers' Mutual Telephone Company of Fairfax v. Nebraska Telephone Company** that where two telephone exchanges were maintained at Fairfax and the Farmers' Mutual Telephone Company desired connection with the Nebraska Telephone Company for the transmission of toll messages only that the Nebraska Telephone Company was entitled to the terminal fee of 5 cents on all messages terminating or originating at Fairfax, and what has been said in this opinion is on the theory that the Nebraska Telephone Company does not maintain any exchange at Wasta, a point upon which there is no information in the record. The arrangement which the Nebraska Telephone Company has with the druggist at Wasta appears to be in violation of law and if connection is made between the lines of the Elm Springs and Wasta Telephone Company and the Nebraska Telephone Company voluntarily it would not be an unreasonable arrangement to permit the druggist to receive the 5-cent fee allowed by the law to an exchange or connection company on each incoming or outgoing toll message.

A question is submitted at the bottom of Page 48 and top of 49 of the record over which this Board has no jurisdiction. It appears that the Board of Directors of both companies have agreed upon a contract, and then the president and secretary of one of the companies refused to sign the contract on the ground that they did not consider it a fair contract and that it was a contract which was adverse to the interests of their company. While this Board has no jurisdiction over this question and does not express any legal opinion, it does seem as though the Board of Directors of a company are its executive officers and that the officers elected by the Board of Directors, to wit, the president, secretary and treasurer, are inferior to the Board of Directors, and that a contract made by the Board of Directors, if properly executed, is legal and valid

* Printed in Commission Leaflet No. 29, at page 945.— Ed.

even though the president and secretary refuse to sign it. The Board of Directors are the immediate representatives of the stockholders and are the responsible managing officers and have authority to direct the manner in which its inferior officers shall transact the business of the company, and likewise have power to direct the proper officers to sign such documents as in the opinion of the Board of Directors are required to be executed. This Commission does not wish to intimate in this connection that it has not jurisdiction over the provisions of contracts with reference to telephone service but only that it has no jurisdiction to decide whether the president and secretary of the telephone company exceeded their authority in ignoring the instructions from their Board of Directors.

. On Page 50 of the record appears the following question: "Is there any ruling that the Commission has made that compels a company to join providing they do not run to your switch, that is, if a company says we wish to join your line and they do not run to our switch, are they not compelled to go to the switch before demanding this connection?" Section 7 of the telephone law with reference to connections between lines provides that no wire shall be compelled to connect except at exchanges or station point and this section also contains a proviso that nothing in the act shall be construed to prevent telephone companies from connecting their lines by mutual consent. Often where a telephone company is operating an exchange within a city or town and a rural party line desires connection, an arrangement is entered into whereby the company operating the local exchange connects with the lines of the rural telephone company at the corporate limits of the city and makes its own connection with its own exchange. In other instances the rural party line brings its wire to the exchange or switch of the local telephone company and there makes the connection. The Board has jurisdiction to order the connection and under the statute in all probability would have authority to compel connection in either manner.

On Page 51 of the record, Mr. C. D. Gillam, one of the directors of the Elm Springs and Wasta Telephone Company, asks the following question: "I was going to ask you whether if a party wanted to rent a 'phone if you could force him to contract for a year in case we have to build our line out a ways, and if we could force him to sign a contract to guarantee us?" In answer to this question, it is the opinion of the Commission that what is a reasonable distance and what are reasonable terms for the compelling of a telephone company to extend its lines to afford telephone service must be decided upon the particular facts in each case, and up to this time the Commission has no information from which it could lay down a general rule on this subject. This is one of the subjects over which the Board has jurisdiction and when the question is presented where, in order to afford telephone service to an intending subscriber, it will be necessary for the telephone company to extend its lines, the terms and conditions upon which the extension shall be made and the service granted must be decided from the facts presented in the record in the particular case then before the Board.

FINDINGS AND CONCLUSIONS.

The hearing in this case was held at Wasta on April 28, 1914, before Commissioner Smith. The Elm Springs and Wasta Telephone Company appeared by its secretary, *Mr. R. E. Huddleson*, its treasurer, *Mr. C. B. Hunt*, and one of its directors, *Mr. D. C. Gillam*. The testimony of each of these officers was taken, and the Board having carefully considered all of the evidence in this case now makes and orders the following:

FINDINGS OF FACT.

That the Elm Springs and Wasta Telephone Company is a corporation organized and existing under the laws of this State and a common carrier engaged in operating a telephone system in this State; that the telephone system

owned and operated by it originates at Elm Springs with branch lines to Wasta, Boneita Springs, Harwood, Creighton and White Owl; that it indulges in the practice of requiring, as a condition precedent to the furnishing of telephone service, that intending subscribers shall first become stockholders in its company, and refuses to rent telephone instruments to persons who are not stockholders in the company; and that it also indulges in the practice of levying an assessment on its stockholders of a sum sufficient each year to pay the operating expenses and to take care of the maintenance and upkeep of the plant.

As conclusions of law from the foregoing facts the Board hereby now finds and decides:

CONCLUSIONS OF LAW.

That an order be made and entered in this proceeding:

(a) Requiring the Elm Springs and Wasta Telephone Company to immediately cease and desist from the practice of compelling persons who desire to rent from it telephone instruments to become stockholders in the company as a condition precedent to receiving telephone service.

(b) Requiring and commanding the Elm Springs and Wasta Telephone Company to afford to all applicants in the community which it serves telephone service without any other consideration or condition than the payment of a rental rate of a certain specified sum per month, the amount of such rate to be approved by this Board.

(c) Requiring and commanding the Elm Springs and Wasta Telephone Company to cease and desist from the practice of levying an assessment for the purpose of paying the operating expenses and the maintenance of upkeep of the plant, and requiring and commanding said company to establish a rental rate for the rental of telephone instruments at a specified sum per month, payable in advance, monthly or quarterly or at the end of the month as its Board of Directors may elect, and that all persons renting telephone instruments, whether stockholders or otherwise, be required to pay the same monthly rental rate for the

rental of telephone instruments and telephone service in connection therewith.

ORDER.

In this case the Board having completed its investigation, made and filed its Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It is, therefore, ordered, considered and adjudged:

(a) That the Elm Springs and Wasta Telephone Company be, and hereby is, commanded and required to immediately cease and desist from the practice of requiring or compelling persons desiring to rent telephone instruments and to receive telephone service in connection therewith to become stockholders in the company.

(b) That the Elm Springs and Wasta Telephone Company be, and hereby is, required and commanded to furnish, without any other consideration or condition than the payment of a monthly rental rate for the rental of telephone instruments, to all applicants in the community served by it telephone service by the rental of a telephone instrument and the furnishing of telephone service in connection therewith.

(c) That the Elm Springs and Wasta Telephone Company be, and hereby is, commanded and required to immediately fix and determine a schedule of monthly rental rates to be charged for the rental of telephone instruments and telephone service in connection therewith, and to file such schedule of rates in the office of the Board of Railroad Commissioners and to charge such rates so made and filed to all subscribers, whether they be stockholders in the company or persons who are not stockholders, and to cease and desist from continuing in effect the method of levying an assessment for the purpose of paying the operating expenses and the maintenance and upkeep of its plant.

Done in regular session at Pierre, the capital, on this eleventh day of July, 1914.

IN THE MATTER OF UNITS OF VALUE TO BE USED IN THE
PHYSICAL VALUATION OF TELEPHONE PROPERTY.

No. 1805.

*Dated June 30, 1914.***Refusal of Commission to Adopt or Approve Certain Units of Value.**

The Commission declined to adopt or approve the units of value presented to it by a representative of the Nebraska Telephone Company and the Northwestern Telephone Exchange Company, and resolved that each telephone company doing business in Nebraska should use its own units of value and should file with its physical valuation in the office of the Board copious explanations as to such units and the items included in such units.

The Board expressed its disapproval of any method of compiling units of value which should include allowances for engineering and superintendence and other similar items.*

RESOLUTION.

WHEREAS, Mr. Guy H. Pratt, commercial manager of the Nebraska Telephone Company, on the sixteenth day of April, 1914, left in the office of the Board of Railroad Commissioners of the State of South Dakota certain books in which were set down certain units to be used in making a physical valuation or appraisal of the property or telephone systems of the Nebraska Telephone Company and the Northwestern Telephone Exchange Company within this State, and such units were submitted for examination and comparison and approval or adoption by the Board of Railroad Commissioners of the State of South Dakota; and

WHEREAS, the Board of Railroad Commissioners of the State of South Dakota has never prepared or caused to be prepared any units of value to be used in such a physical valuation or appraisal of telephone property, and is of the opinion that such units of value should only be adopted after a careful, exhaustive and elaborate investigation in which all persons interested in the preparation of

* Editor's headnote.

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such units should be given an opportunity to be heard and testimony submitted as to the proper items to be incorporated into such units of value, and the Board being also of the opinion that it is not now in a position to adopt units of value to be used in the physical valuation or appraisal of the telephone property of the different telephone companies doing business in this State:

Be it, therefore, resolved, By the Board of Railroad Commissioners of the State of South Dakota that it at this time decline to adopt or approve of the units of value presented to it by the representative of the Nebraska Telephone Company and the Northwestern Telephone Exchange Company; and

Be it further resolved, That in making the physical valuation of their properties, each of the telephone companies doing business in this State use its own units of value and with its physical valuation or appraisal file in the office of this Board a copy of the units of value used by it in making such appraisal or valuation, with copious explanations as to the use of such units and the items included in such units; and

Be it further resolved, That this Board disapproves of the method of compiling units of value which shall include items or allowances for engineering and superintendence and other similar items.

WISCONSIN.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF THE COLOMA TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

U—321.

Decided June 20, 1914.

Increase in Rates—Inadequate Accounting Methods—Cost of Plant—Operating Revenues and Expenses.

Upon application of the Coloma Telephone Company for authority to increase its rates from \$10.00 per annum or \$1.00 per month to \$12.00 per annum or \$1.25 per month, it appeared that the reason that the increase was desired was to offset the increase in operating expenses due to the advance in wages, increase in taxes, payment of industrial insurance and general higher cost of materials. The Commission, in attempting to determine the cost of property and plant of the applicant, and the operating revenues and expenses, found that the accounting methods of the company were defective. Nevertheless, after a general inspection of the balance sheet and the expense items, the Commission allowed an increase of rates to \$11.00 per year in cases where the charge for telephone service was paid in advance for a full year, and to \$1.10 per month in cases where the service was paid for monthly.

The Commission stated that this increase did not mean that in its judgment \$11.00 per year would fully cover all costs of adequate telephone service, but that in view of the defective reports which the utility had made, and in view of the condition in which its accounts were kept, the Commission could not go beyond the rate mentioned, as it was impossible to state accurately what the cost of service was; that if the experience of the utility with a proper set of accounts showed the necessity for rates as high as those applied for, another application might be made.*

OPINION AND DECISION.

The Coloma Telephone Company applies under date of February 16, 1914, for authority to increase its rates. The application states the present schedule to be \$10.00 per annum or \$1.00 per month, and asks authority to in-

* Editor's headnote.

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crease the rates to \$12.00 per annum or \$1.25 per month. A hearing was held at the office of the Commission in Madison on May 20, 1914. *F. W. Potts* appeared for the applicant. There were no appearances to contest the application.

At the hearing it developed that the reason the increase was desired was to offset the increase in operating expenses due to the advance in wages, increase in taxes, payment of industrial insurance and general higher cost of materials. It was stated that the increased cost of operating the system was reflected in the report to the Commission for the fiscal year 1913 with the exception of the item of industrial insurance, which amounted to \$75.00 with the pay roll as it is constituted at present.

The data at hand upon which to base computation to ascertain the fairness of the applicant's request are exceedingly meager and unsatisfactory. The financial report for the year 1912 contains practically nothing upon which we may rely. The report for 1913, while fairly complete as to income account, shows a balance sheet that must be scanned with care before accepting its figures as accurate. In the report as originally submitted by the company the cost of property and plant at the beginning of the year was given as \$9,984.02, while no details of this item were given in the table of the report designed to show the elements that make up that item. From an inspection of the report of the preceding year, it was evident that the figure for 1913 represented simply the total assets as shown in the balance sheet for the year before, brought forward as the first item in the balance sheet for the year 1913. Request being made for the details of the figure, a revised balance sheet was submitted which showed total assets of \$4,820, or an amount equivalent to the sum of the outstanding capital stock and the notes and bills payable as shown on the opposite side of the balance sheet. The cost of property and plant at the beginning of the year was given as \$2,444.24, an amount less than that shown for the same item in the previous year's balance sheet. The un-

certainly thus manifested as to the actual cost of the plant, coupled with the very evident inadequacy of the figure last shown to cover the entire cost of a system of the size of the one under consideration, throws such doubt upon the balance sheet as submitted as to render it of little practical use in determining a fair value of the property.

It is likely, however, that the figure shown in the 1913 report as originally submitted represents approximately the investment in the property involved in this case. In that report the cost of property and plant at the close of the year is shown as \$11,403.52. From an investigation of the value of other properties of similar size to this one and similarly located and equipped, we conclude that this figure is more reasonably acceptable as representing the actual investment in this property than the one given in the revised balance sheet. In the interest of conservatism, however, for the purpose of the computations in the case, it may be well to adopt a figure somewhat lower than the one indicated as representing the value. The error either way would not be great if we regard \$11,000 as a fair approximation of the amount invested.

Although the accounting methods and results of the company are not of the best, a general inspection of the expense items discloses nothing seriously abnormal about them. It may be safely assumed that they fairly show the actual cost of operating the system. It was stated at the hearing that the item of industrial insurance that the company is now required to pay amounted to \$75.00. This amount has been included in the computations to determine the requirements of the plant.

The total earnings are shown to be \$3,186.77. Of this amount \$2,062.66 is consumed by the operating costs, including taxes, amounting to \$81.92, and the industrial insurance already spoken of. There is left the sum of \$1,124.11 from which to provide a sufficient fund to meet depreciation and to pay interest charges. Computing depreciation at $6\frac{1}{2}$ per cent., a normal rate for plants of this character, and estimating the interest at 7 per cent. on

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the investment, we find that the earnings are insufficient to meet all the burdens of operating, taxes, depreciation, and interest, by the sum of \$360.89. If we now increase the total earnings by a sum equal to the increase that would result were the rates of the company placed at \$12.00 per annum, the gross earnings appear as \$3,846.77. Deducting from this amount the same operating expenses, taxes, depreciation and interest as used above there results a surplus of \$299.11.

From such facts as are available, therefore, it appears that the rate asked for by the company is somewhat larger than is necessary to carry on the business and provide an adequate return upon the property. In view of these conditions it appears equitable to authorize a partial increase in this case. An increase to \$11.00 per year in cases where the charge for telephone service is paid in advance, and to \$1.10 per month when the service is paid monthly, would appear to be as large an increase as is required by such facts as are available in this case. This does not mean that it is the judgment of the Commission that \$11.00 per year will fully cover all cost of adequate telephone service. In view of the defective reports which the utility has made, however, it does not seem we should go beyond the rate mentioned. When the utility has its accounts in proper shape we will be in position to determine accurately the cost of service, and if further increases should be made, the necessity for such increases will be disclosed by the records of the utility. Until such time as the accounts are properly kept, however, it would almost be an impossibility to state accurately what the cost of service amounts to, and we do not feel that an increase beyond the amounts mentioned should be authorized until the cost can be fully known. The Commission will be ready to extend necessary assistance in putting the accounts of this company on an adequate basis and in furnishing all necessary information regarding the methods of keeping the records. If the experience of the utility with a proper set of accounts shows the necessity for rates as high as those applied for in the

application, there will be nothing to prevent another action at the proper time.

It is, therefore, ordered, That the applicant in this case, the Coloma Telephone Company, be, and the same hereby is, authorized to discontinue its present rates for telephone service and substitute therefor the rate of \$11.00 per 'phone per year where payment is made in advance for a full year, and a rate of \$1.10 per month where payment is not made in this manner. This rate may become effective, if the company so chooses, on July 1, 1914.

Dated at Madison, Wisconsin, this twentieth day of June, 1914.

IN THE MATTER OF THE APPLICATION OF THE ELEVA FARMERS
TELEPHONE COMPANY FOR AUTHORITY TO INCREASE
RATES.

U — 319.

Dated June 21, 1914.

Inadequate Revenue — Inefficient Service — Increase in Rates — Discrimination against Stockholders.

Upon investigation on motion of the Commission it appeared that the rates charged by the Eleva company were inadequate to meet the requirements of the company's operating expenses; that stockholders were discriminated against in that they paid the same rentals as other patrons and were also obliged to contribute in order to cover the deficits from operation; that the service was not good; and that an increase in rates was essential to the company's welfare.

The Commission prescribed a schedule of rates which, based on the service data given in the company's 1913 report, would allow a return of 7 per cent. upon the investment after providing for operating expenses, maintenance and depreciation, but which would leave only a small surplus if operating expenses should increase or if a greater depreciation reserve than 6½ per cent. should be set aside.*

OPINION AND DECISION.

The adequacy of the rates of the Eleva Farmers Telephone Company is before the Commission in two proceed-

* Editor's headnote.

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ings, the first being an investigation on motion of the Commission and the second being the application of the company itself for authority to increase rates. To economize time and space the two proceedings will be dealt with in one decision.

The investigation on motion of the Commission was instituted as a result of a complaint brought by several stockholders of the company in which it was alleged in general that the rates charged were inadequate to meet the requirements of the company; that last year's operation showed a deficit of \$100; that the stockholders were discriminated against in that they paid the same rentals as other patrons and were obliged to contribute to cover the deficits from operation; that the service was not good; and that a raise in rates of \$2.00 a year was essential to the company's welfare.

A hearing was held at the Commission's offices in Madison on April 11, 1914. *J. A. Nelson*, president of the company, and *John Tollefson*, vice-president, appeared for the company. There were no appearances for the petitioners.

The schedule of gross rates of which complaint is made is as follows:

\$10.00 per year for rural and two-party residence 'phones.

\$13.00 per year for business and single-party residence 'phones.

A discount of 25 cents per quarter is allowed if payment is made in advance.

At the hearing it developed that the rates were admittedly inadequate to pay operating expenses, keep up repairs, and set aside a fund for depreciation, to say nothing of providing satisfactory service. Subsequently to the hearing the company itself filed an application for authority to increase its rates to the following schedule:

\$12.00 per year for rural or three-party residence 'phones.

\$15.00 per year for single-party residence 'phones.

\$18.00 per year for business 'phones.

Bills to be paid quarterly, with a discount of 25 cents per quarter if paid in advance.

The cost of the property and plant involved in this case is given at the close of the fiscal year as \$6,883.62. The report of the company to the Commission, made June 31, 1913, shows that there were 272 subscribers, 112 miles of pole line and 195 miles wire line at that date. According to the report the cost per sub-station is, therefore, about \$25.30, per mile of pole line, \$61.40, and per mile of wire line, \$35.20. At the hearing it was testified that the actual cost of the property was in the neighborhood of the capitalized value, or about \$8,000. This would give a cost per sub-station of \$29.40; per mile of pole line of \$71.50, and per mile of wire line of \$41.00. An investigation of the costs of construction of other plants comparable to the one under consideration shows that the costs per unit here given are exceedingly conservative. The strong probability is that the figure testified to in the hearing more nearly represents the actual amount of the investment than does the reported cost of property and plant.

It was testified at the hearing that the total earnings from subscribers for the calendar year 1913 amounted to \$2,143 and that the total expenditures for the same period was \$2,712.15. Of this latter amount a small part was expended for new property and a portion for renewals. The amount expended for these purposes was estimated at about \$600, thus indicating that the operating expenses were in the neighborhood of \$2,112.15. This appears to be a reasonably normal figure. There would, therefore, appear to be a small deficit from operation during the calendar year 1913, and it is apparent that there cannot be enough return from the present rates to adequately provide for the upkeep of the property and depreciation. Under these conditions, resort must be had to assessments of stockholders, a necessity that is inherently undesirable and unjust, particularly when part of the subscribers are not stockholders.

If the rates asked for in the application be allowed to be installed, with the modification that a new rate of \$12.00 per year for two-party residence service be added, the re-

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sult from operation, based on the service data given in the 1913 report, would appear as follows:

ELEVA FARMERS TELEPHONE COMPANY.

ESTIMATED EARNINGS.

<i>Character of 'phone</i>	<i>Number of 'phones</i>	<i>Proposed rate, net</i>	<i>Return</i>
Business:			
One-party	18	\$17 00	\$306
Residence:			
One-party	12	14 00	168
Two-party	8	12 00	96
Three-party	6	11 00	66
Residence on farm lines	3	11 00	33
Rural:			
Farm subscribers	227	11 00	2,497
TOTAL			<u>\$3,166</u>

Without allowing for an increase in operating expenses the surplus from operation resulting under these rates would amount to \$1,054, an amount scarcely sufficient to provide for a depreciation reserve computed at $6\frac{1}{2}$ per cent. on the cost of the property and a return on the investment of 7 per cent. If there result any increase in operating expenses such as normally may be expected, and if the company provide for depreciation according to the dictates of sound business management, there probably will be slight surplus remaining for return. The situation, therefore, while not being all that could be desired from the stockholders standpoint, will not be such as can be complained of by subscribers in general.

It is, therefore, ordered, That the Eleva Farmers Telephone Company be, and the same hereby is, authorized to abandon its present rates and substitute therefor the following schedule:

Gross Rates:

\$18.00 per year for business 'phones.

\$15.00 per year for single-party residence 'phones.

\$13.00 per year for two-party residence 'phones.

\$12.00 per year for rural or three-party residence 'phones.

Bills to be paid quarterly on the first day of each quarter with a discount of 25 cents per quarter if paid in advance.

These rates may be placed in effect July 1, 1914.

Dated at Madison, Wisconsin, this twenty-first day of June, 1914.

HAWKINS CREEK TELEPHONE COMPANY AND WESTFORD TELEPHONE COMPANY v. BADGER TELEPHONE COMPANY.

U — 324.

Decided June 29, 1914.

Compulsory Physical Connection and Interchange of Service — Switching Fees.

Upon petition asking that physical connection be established between the lines of the petitioners and those of the respondent, it appeared that physical connection and interchange of service had previously existed between the lines of the three companies at Hub City and between the lines of the Hawkins company and the respondent at Pleasant Ridge, but that because of a disagreement over the amount which the plaintiffs should pay to the respondent for switching fees the respondent had disconnected its lines.

The Commission found that the connections requested were required by public convenience and necessity; that they would not result in irreparable injury to the owners or other users of the facilities of the respondent; and that no substantial detriment to the service of either the complainant or respondent would result from the connections asked for.

Ordered, That the Badger Telephone Company reconnect its rural line running into Hub City to the Hub City switch of the complainants, and re-establish service to and from this switch over this line;

That said respondent reconnect its rural line which extends to Pleasant Ridge, with the Hawkins Creek Telephone Company's rural line which extends into the same locality, by the means of a switch installed in some conveniently located farm house, and re-establish the service to and from this switch over this rural line;

That all the parties to these proceedings put into effect the following rates for service through these switches, said rates to be in addition to the regular rates for service charged by these companies: \$1.00 per year for subscribers who elect to have unlimited service from the lines of the respondent to those of the complainants, or reverse, through either or both of the switches; 5 cents per call toll charge for subscribers not electing the unlimited service; free service through the Hub City switch between lines owned by the complainants;

That the operators of the switches shall be held responsible for an accurate record of all toll calls passing through their respective switches and be entitled to 2 cents of the 5 cent toll charge, the remaining 3 cents to go to the company originating the call, which company shall be responsible for the collection of the full amount of the toll charge;

That companies not parties to this case desiring to obtain the advantage of the above unlimited service flat rate, may obtain the same by applying to the party to this case with which they connect directly, and by paying the \$1.00 per year charge for each subscriber electing to come under this rate.

Routing of Messages.

Held: That calls from the subscribers of the complainants to subscribers of the respondent, or reverse, should always be routed through one of the switches in question, except in cases of emergency or in case subscriber wishes to use the toll line facilities of a company making regular toll charges for such calls.

Maintenance and Operation of Switches.

Ordered, That the respondent and the Hawkins Creek Telephone Company share equally in the expense of the operation and maintenance of the Pleasant Ridge switch, and provide sufficient compensation to the operator of this switch to insure adequate service;

That each of the three parties to this case pay to the operator of the Hub City switch of the complainants, the sum of \$1.00 per telephone per year for each telephone on its lines which are, or which by virtue of this order hereafter become, directly connected to this switch.

Reduction of Number of Subscribers per Line.

Ordered, That in the interests of good service the Hawkins Creek Telephone Company proceed to reduce the number of its subscribers per line to twelve or less.*

OPINION AND DECISION.

The above entitled matter involves the question of physical connection between the Hawkins Creek Telephone

* Editor's headnote.

Company and the Westford Telephone Company, complainants, and the Badger Telephone Company, respondent, at Hub City and at what was formerly known as Rego's switch, in Vernon County. It appears that the lines of the three companies were connected at these points up to about one year ago, at which time a disagreement occurred over the amount which the complainants should pay to the respondents for switching fees, with the result that the respondent disconnected its lines from the above mentioned switches. The complainants in this case are seeking to have these connections restored.

Upon the disconnection by the Badger company of their lines from those switches, the matter was brought to the attention of the Commission and an effort was made to arrive at a settlement informally. This effort failed, however, and on December 13, 1913, a formal complaint was entered jointly by the Westford Telephone Company and the Hawkins Telephone Company against the Badger Telephone Company in which the following points were set forth:

"1. That the Hawkins Creek and Westford Telephone Companies are both public utilities engaged in the business of furnishing telephone service, local and long distance, in the counties of Richland and Sauk; that the principal place of business of both is at Cazenovia.

"2. That the Badger Telephone Company is also a public utility corporation furnishing local and long distance telephone service in Richland and Vernon Counties, but chiefly in Vernon County.

"3. That large numbers of the subscribers of said companies greatly need and desire service with the other; that such a connection is desired for business and social purposes.

"4. That up to May 19, 1913, the said companies maintained physical connection of their lines at Hub City, Richland County, and had so maintained such physical connection for some twelve years prior to said date, and also Pleasant Ridge connections for some years.

"5. That on said May 19, 1913, the respondent company without just cause or reason, severed the physical connection between the petitioner and the respondent and refuses and neglects to restore such interchange of service, and severed the Pleasant Ridge connections about June 15, 1913.

"6. The petitioners therefore pray that the aforesaid Badger Telephone Company be required to answer such charges, and after investigation and

hearing an order be entered directing physical connection between petitioners and respondent for local and toll purposes on such terms and conditions as to the Commission may deem proper and just."

The above complaint entered in duplicate, one for the Hawkins Creek Telephone Company and one for the Westford Telephone Company, was signed by some 30 subscribers of the two complaining companies and 7 of the respondent's subscribers. These signers reside principally in the neighborhood of the dividing line between the complainants' and respondent's lines.

On February 18, 1914, hearing was held in the matter at the office of the Commission at Madison. *Micheal Neary* appeared for the Hawkins Creek Telephone Company and *W. C. Scholl, Frank Bowen* and *R. E. Fogo* appeared for the Badger Telephone Company. Owing to an error the Westford Telephone Company did not receive notice of the hearing and hence was not represented at the hearing. However, an agreement was entered into among the three companies concerned by which the Westford Telephone Company waived its notice of investigation and notice of hearing and agreed that its case might be passed upon and decided wholly upon the testimony and papers filed informally and those filed in the case of the *Hawkins Creek Telephone Company v. Badger Telephone Company*, and that the final order of the Commission might cover all questions raised and considered in both of said proceedings.

Following the hearing, an investigation was made of the situation by the Commission. This investigation, together with the testimony taken in the case, has brought out the following in addition to the facts already presented.

The Hawkins Creek Telephone Company is a farmers' company operating two lines. One of these extends from the Hub City switch to the exchange of the Cazenovia Telephone Company at Cazenovia, a distance of about twelve miles, and serves 18 patrons. The other line extends from Pleasant Ridge (about seven miles east of Hub City) approximately seven miles to the Cazenovia Telephone Company's exchange at Cazenovia and serves 15 patrons. On

the Pleasant Ridge end of this line is what is known as the Rego switch by which this line was formerly connected to one of the rural lines of the Badger Telephone Company running to Richland Center. The lines of the Hawkins Creek Telephone Company are constructed largely of native poles which appear to be standing in good shape and for the most part are fairly well anchored. However, the wire appears to have been poorly put up, the splices not being properly made and the wire often not properly tied in. This company pays \$12.50 per year toward the maintenance of the switch at Hub City. Its rates for service are \$7.00 per year, each subscriber owning and maintaining his instrument.

The Westford Telephone Company also operates in the territory between Hub City and Cazenovia, its lines approximately paralleling, but lying to the north of, the Hawkins Creek Telephone lines. This company operates 6 lines on which there is a total of 76 'phones. Two of these lines run from Hub City to the exchange of the Cazenovia Telephone Company at Cazenovia, one having 13 'phones and the other 11. One line with 11 patrons runs out of the Hub City switch and connects with no other exchange. The remaining three lines connect with the Germantown switch which is owned and maintained entirely by this company. These three lines form part of the means of communication between Cazenovia and Valton, Wonewoc, and La Valle. The Westford company pays \$25.00 per year toward the operation of the Hub City switch. Its rate is \$6.00 per year with the understanding that the subscriber own and maintain his own instruments.

The Cazenovia Telephone Company although not a party to this case is, nevertheless, a party to the completion of all calls between Cazenovia and the Badger Telephone Company's lines and hence a brief outline of the ownership and extent of operation of this company will be given. The company is owned jointly by the Hawkins Creek Telephone Company and the Westford Telephone Company. It operates a total of 33 'phones, all located within the vil-

lage of Cazenovia. A 25 line call-bell switchboard with 13 lines in use is installed in a private residence. Two of the lines terminating in this board are owned by the Hawkins Creek Telephone Company and two by the Westford Telephone Company. The two Westford lines and one Hawkins Creek line run to the Hub City switch. The other Hawkins Creek line runs to Pleasant Ridge. One of the remaining lines is owned by the People's Telephone Company of Lime Ridge. This loaded line, on which there are 5 telephones, connects with the Lime Ridge exchange and at present forms part of one of the connections between Cazenovia and Richland Center which have been used since the disconnection of the Badger Telephone Company's lines.

The Badger Telephone Company, according to its annual report for the year 1913, operates 253 telephones in the rural territory north and west of Richland Center. Most of this company's lines run into the exchange of the Richland Telephone Company at Richland Center where switching service is furnished at \$3.00 per telephone per year. One of this company's lines on which there are 12 subscribers follows a main lead north from Richland Center through Hub City to Yuba, and another follows this main lead north as far as Buck Creek, there branching off northeast and terminating near what was formerly known as Rego's switch on Pleasant Ridge. Previous to May, 1913, these lines were connected through switches directly to the Hawkins Creek and Westford Telephone Companies' systems, one line at Hub City and the other at Rego's switch. In both of the above instances the loaded lines of the companies thus connected were used to a certain extent to handle calls from Cazenovia to Richland Center and reverse, and they also served the wants of the neighboring farms on the lines connected directly to these switches. During the month of May, 1913, the Badger Telephone Company served notice upon the Hawkins Creek and Westford companies that thereafter a switching charge of \$3.00 per telephone per year would have to be paid by the two

small companies to the Badger company if they desired to retain the connections at Hub City and at Rego's switch. Upon the refusal of the two companies to agree to the payment of this amount the Badger company disconnected their lines from both switches.

The complainants in this case contend that there is a great necessity for a connection between their subscribers and the subscribers of the Badger company and in support of this contention present, signed to the complaint, the names of some 37 of the subscribers of both the complainant and respondent; that the connection is important because one of the Badger subscribers is a doctor living at Rock Ridge, which is located about two miles south of Hub City, and that it is very necessary that their subscribers have some connection with this doctor; that there is a certain amount of business to be transacted between Cazenovia and the subscribers of the Badger Telephone Company and the Richland Telephone Company, and that the route at present used for these calls is very roundabout and unsatisfactory; that before the Badger Telephone Company disconnected its line from the Hub City switch the calls from the Badger line to the complainants' lines were many more than the calls in the reverse direction; that the Badger Telephone Company did not contribute anything to the support of these switches during the two years previous to the disconnection of their lines from the complainants' lines; that the terms upon which the respondent proposes to settle this controversy, which are, namely, that the Badger company buy and maintain the switch at Hub City and that the complainants pay to the Badger company a switching fee of \$3.00 per telephone per year, are unreasonable, and that such a sum as this would amount to approximately \$171 and would be greatly in excess of the cost to the Badger Telephone Company of producing its share of the service; that the cost to produce the complainants' share of this service would be as much or more than the cost to the Badger company for producing their share and, therefore, the complainants

should be entitled to as great a return from the service as the respondent.

The Badger Telephone Company asserts, on the other hand, that its one line now running to Hub City has 12 subscribers connected and contends that the connecting of this loaded line with one of the complainants' loaded lines and the using of the combination as a through line between Cazenovia and Richland Center would materially impair the service of the subscribers already on this line; that the amount of business which would go over such a line would not warrant the building of a through line from Richland Center to Hub City; that the reconnection of the two rural lines at Rego's switch would make unsatisfactory service over the combination of lines, on which there would be a total of 27 'phones; that the respondent pays the Richland Center Telephone Company \$3.00 per telephone per year for switching service and, therefore, it considers that if it maintains and operates the switches at Hub City and Rego's and furnishes switching service to the Hawkins Creek and Westford Telephone Companies, it is entitled to \$3.00 per year per telephone from every 'phone connected directly to those switches.

Before proceeding further it may be well to state the powers and duties of this Commission with reference to the physical connection between telephone companies.

The statute provides that (Section 1797m-4):

"1. * * * every utility for the conveyance of telephone messages shall permit a physical connection or connections to be made, and telephone service to be furnished, between any telephone systems operated by it, and the telephone toll line operated by another such public utility, or between its toll line and the telephone system of another such public utility, or between its toll line and the toll line of another such public utility, or between its telephone system and the telephone system of another such public utility, whenever public convenience and necessity require such physical connection or connections, and such physical connection or connections will not result in irreparable injury to the owners or other users of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such public utilities. The term 'physical connection,' as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be

required to furnish reasonably adequate telephone service between such public utilities.

"2. In case of failure to agree upon such use or the conditions or compensation for such use, or in case of failure to agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, any public utility or any person, association or corporation interested may apply to the Commission, and if after investigation the Commission shall ascertain that public convenience and necessity require such use or such physical connection or connections, and that . . . such use or such physical connection or connections, would not result in irreparable injury to the owner or other users of such equipment or of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or such public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use, and that such physical connection or connections be made, and determine how and within what time such connection or connections shall be made, and by whom the expense of making and maintaining such connection or connections shall be paid.

"3. Such use so ordered shall be permitted and such physical connection or connections so ordered shall be made, and such conditions and compensation so prescribed for such use and such terms and conditions, upon which such physical connection or connections shall be made, so determined, shall be lawful conditions and compensation for such use, and the lawful terms and conditions upon such physical connection or connections shall be made to be observed, followed and paid, subject to recourse to the courts upon the complaint of any interested party, as provided in Sections 1797m-64 to 1797m-73, inclusive, and such section so far as applicable shall apply to any action arising on such complaint so made. Any such order of the Commission may be from time to time revised by the Commission upon application of any interested party or upon its own motion."

It will be observed that before the duty of making a physical connection of telephone lines under the statute is imposed upon telephone utilities, and can be enforced in any case, it must appear:

1. That the connection is required by public convenience and necessity;
2. That it will not result in irreparable injury to the owner or other users of the facilities of such public utilities; and

3. That no substantial detriment to the service will result therefrom.

In the case at hand it is urged that there is great necessity for a connection between the lines mentioned, especially for the neighboring farmers living in the vicinity of Hub City and Pleasant Ridge. The geographical location of some of the respondent's subscribers indicates that their position is well taken in contending that, although they are the respondent's subscribers, their nearest market is Cazenovia, and hence a workable connection to Cazenovia is very much needed. Also there appear to be quite a number of the complainants' subscribers residing in the neighborhood of Hub City who are so located that it is desirable for them to have a connection to Richland Center. It is the presumption that when the subscribers of both the complainants and respondent in this locality agreed to take 'phones it was with the understanding that the service which they were to secure would extend to both Cazenovia and Richland Center. It appears, therefore, that in the disconnection of the lines in question the respondent in this case has deprived its subscribers, as well as some of the complainants' subscribers, of part of the service which they had enjoyed for a number of years and had a right to expect when they installed their telephones. The fact that this connection existed for some twelve years and gave comparative satisfaction up until a year ago, at which time it was disconnected only because of a disagreement between the companies involved relative to the amounts which should be paid by one company to the other for the connection, indicates that there exists a need for the connection. The contention of the respondent that at present there exists adequate through connection between Cazenovia to Richland Center cannot be upheld. Both of the routes via Hillsboro and via Lime Ridge are roundabout ways over loaded lines and involve the use of the lines of companies not interested in the completion of these calls. Taking all of the facts into consideration the conclusion seems inevitable that, although the traffic will in all proba-

bility not be great, there exists a public necessity requiring a reconnection of the lines of the complainants and the respondent in this case.

To show that these physical connections will work no irreparable injury to either party to this case would seem to require little proof. As stated before, the connections have existed for a number of years and were disconnected only because the companies involved could not agree upon the terms for continuing the connection.

It may be contended that the requiring of this physical connection will impair the service of the subscribers on the line since, if the present loaded rural lines of these companies are connected, through calls from Cazenovia to Richland Center will pass over these lines as well as calls to and from subscribers of both companies who are connected directly to the lines in question. There is no question but that the traffic over the lines will increase to some extent and that the service to the subscribers will be somewhat impaired thereby. It is stated, however, that the amount of traffic which came through the Hub City switch or the Rego switch and was handled at the Richland Center exchange before the lines were disconnected was very small. If this is true the service will not be impaired to a large extent. On the other hand, calls to or from subscribers on these connecting lines must be considered to be an advantage to these subscribers and it is believed that the advantage to them of such a connection will outweigh any impairment of service which they may suffer as a result of the through calls.

It will, therefore, be ordered that the Badger Telephone Company reconnect its lines to the Hub City switch of the Hawkins Creek and Westford Telephone Companies and to the Pleasant Ridge switch of the Hawkins Creek Telephone Company.

The statute above quoted also provides that this Commission shall fix the terms and the manner of the physical connections which it orders made.

Inasmuch as the through traffic which will go over these lines is admittedly a comparatively small amount, it is not deemed advisable at this time to require the installation of a through line from Richland Center to Hub City or from Cazenovia to Hub City. When the connections of the rural lines which will be ordered have been made and it becomes possible to obtain more definite traffic data, this Commission will, upon request, investigate further the matter of the installation of a through toll line. For the present it is believed that the loaded rural lines, with some changes, will handle the traffic in a fairly satisfactory manner.

The lines of the Hawkins Creek Telephone Company appear to be considerably overloaded, there being 18 patrons on one line and 15 on the other. It will be only in the interests of good service to the subscribers on the Hawkins Creek lines to require that this number per line be reduced. This company will, therefore, be given a reasonable time in which to decrease the number of its subscribers per line to 12 or less.

The cost of the Pleasant Ridge switch amounts to very little and likewise its maintenance and operation will not be very high. It is believed that it will be fair to both companies, *i. e.*, the Badger Telephone Company and the Hawkins Creek Telephone Company, if each pay one-half of the expense of the operation and maintenance of this switch.

The Hub City switch is owned jointly by the Hawkins Creek Telephone Company and the Westford Telephone Company and for the past few years has been maintained entirely by these companies. We see no adequate reason now for advising a change of ownership of this switch. So far as we are able to learn it has been fairly well maintained, although the operators have been poorly paid. The compensation which the operators of this switch have received has been approximately \$37.50 per year. Comparisons of this sum with compensations received by operators of similar switches in other parts of the State indicates

that this compensation is quite inadequate if prompt and efficient operating service is required. For the past two years, it is stated, the Badger Telephone Company has contributed nothing toward the support of this switch. We see no good reason why this company should not bear its proportionate part of this expense of operation providing it is so arranged that this company receive a proper compensation for this service. To meet the above situations we consider it fair that each company which at the present time has, or by virtue of this order will have, lines connected to the Hub City switch, pay to the operator of that switch \$1.00 per year for each telephone on those of its lines which run into the switch.

The contention by the Badger Telephone Company that it should receive \$3.00 per year per telephone for switching service from each of the complainants' telephones directly connected to either switch does not appear to be justified. The argument advanced in support of this position, that because the Badger company is required to pay \$3.00 per telephone per year to the Richland Telephone Company for switching service it is entitled to make the same charge to the Westford and Hawkins Creek Telephone Companies' subscribers does not take into consideration the fact that the amounts and cost of the service rendered in the two cases are entirely different. In one case the Richland Telephone Company furnishes a considerable amount of expensive equipment as well as efficient operating labor while even if the Badger company owned the Hub City and Pleasant Ridge switches, which it does not, its investment per telephone in this equipment would be comparatively small as would also be the operating expense per telephone. It appears in this case that the service rendered to the complainants by the respondent by means of the switches at Hub City and Pleasant Ridge costs very little, if any, more than the service which is rendered to the respondent by the complainants, and that, therefore, all companies concerned should share in the upkeep of the service. However, it is not deemed equitable

that every subscriber of all companies which are parties to this case should be required to contribute to the support of this service, but rather only those who make use of the service. A subscriber so located that he finds it is desirable to have telephone connection to two markets instead of one must expect to pay a reasonable amount for this extra service.

The situation has been studied carefully, and from the data at hand it appears reasonable that a charge of \$1.00 per year be made for each subscriber of the companies made parties to this case desiring unlimited service through the switches in question, and that a 5-cent toll charge be made upon all calls through the switches from those subscribers not electing the above flat charge; that the operators at the switches be held responsible for the collection of all toll charges incident to this order; that each of the three companies which have been made parties to this case keep the operators of the switches in question supplied with strictly up-to-date lists of those of its own subscribers and of the subscribers of connecting companies who elect the unlimited service rate, and that these lists be open to public inspection; that companies not parties to this case which desire to give their subscribers the advantage of the above unlimited flat rate service through the switches in question be allowed to do so upon making application for this service to that party to this case with which they connect directly and upon payment to this company of the \$1.00 per year flat rate for each of their subscribers electing this service; that the names of such subscribers be immediately sent to the operators of the switches in question; that companies not parties to this case who refuse to be responsible for the collection of the toll charges provided for in this order be refused connection; that, except in cases of emergency, calls from the subscribers of the complainants to the subscribers of the respondent in this case, or reverse, be routed through one of the switches in question. (This provision is not to apply to subscribers desiring to use the toll line facilities of any company which furnishes such equipment and makes a toll charge therefor.)

It is, therefore, ordered, 1. That the Badger Telephone Company, respondent in this case, reconnect its rural line running into Hub City to the Hub City switch of the complainants in this case, and re-establish the service to and from this switch over this line subject to such provisions as are hereinafter stipulated;

2. That the Badger Telephone Company reconnect its rural line which extends to Pleasant Ridge with the Hawkins Creek Telephone Company's rural line which extends into the same locality by means of a switch installed in some conveniently located farm house, and re-establish the service to and from this switch over this rural line subject to such provisions as are hereinafter stipulated;

3. That all companies which are parties to these proceedings put into effect the following optional rates for service through these switches; which rates shall be in addition to the regular rates for service charged by these companies:

\$1.00 per year for subscribers who elect to have unlimited service from respondent's lines to complainants' lines, or reverse, through either or both of the switches.

5 cents per call toll charge for subscribers not electing the unlimited service at the above unlimited service rate.

Calls through the Hub City switch between lines owned by the complainants in this case shall be handled free.

4. That the operators of the switches shall be held responsible for an accurate record of all toll calls through their switch and be entitled to 2 cents of the 5-cent toll charge. The remaining 3 cents of this toll charge shall go to the company originating the call which company shall be responsible for the collection of the full amount of the toll charge;

5. That each of the three companies made parties to these proceedings shall keep the operators of the switches in question supplied with strictly up-to-date lists of those of its own subscribers and of connecting companies' subscribers who elect the unlimited service rate of \$1.00 per year, and that these lists shall be open to public inspection;

6. That each company made a party to this case shall require that all elections of the unlimited service rate shall be made at least six months in advance and may at their option also require payment for this service six months in advance so long as no discrimination between subscribers of the same company is practiced;

7. That companies which are not parties to this case desiring for their subscribers the advantage of the above unlimited service flat rate of \$1.00 per telephone per year may obtain this rate by making application for same to that party to this case with which they connect directly, and by paying the \$1.00 charge per year for each subscriber electing to come under this rate. The names of such subscribers shall be sent immediately to the operators of the switches in question. Companies not parties to this case refusing to be responsible for the collection of the toll charges provided for in this order shall be refused connection by the operators of the switches;

8. That calls from the subscribers of the complainants to subscribers of the respondent in this case, or reverse, shall always be routed through one of the switches in question, except in cases of emergency or in case the subscriber wishes to make use of the toll line facilities of such companies as make regular toll charges for such calls;

9. That the Badger Telephone Company and the Hawkins Creek Telephone Company shall share equally in the expense of the operation and maintenance of the Pleasant Ridge switch and provide sufficient compensation to the operator of this switch to insure adequate service through the switch;

10. That each of the three companies to this case shall pay to the operator of the Hub City switch the sum of \$1.00 per telephone per year for each telephone on its lines which are, or which by virtue of this order hereafter become, directly connected to this switch;

11. That the Hawkins Creek Telephone Company shall proceed to reduce the number of its subscribers per line to 12 or less.

Ten days is considered sufficient time within which to

comply with all sections of this order, except Section 11. September 1, 1914, is deemed to be a reasonable date at which the changes ordered in Section 11 shall be completed.

Dated at Madison, Wisconsin, this twenty-ninth day of June, 1914.

In re APPLICATION OF THE PRESCOTT TELEPHONE EXCHANGE
FOR AUTHORITY TO INCREASE RATES.

U — 328.

Granted June 30, 1914.

Increase in Rates for Business Telephones Granted — Inadequate Revenue.

OPINION AND DECISION.

This application was filed with the Commission on March 5, 1914. The Prescott Telephone Exchange is a public utility operating a telephone system in Prescott, Wisconsin. The application shows that the lawful rates of the applicant now in effect are 75 cents per month for local residence and business telephones, and \$1.00 per month for rural telephones. The applicant asks for an increase in rates for the reason that it considers the rate of 75 cents per month for business subscribers too small to meet the expense of this class of service. Authority is asked to increase the rate for business telephones to \$1.25 per month.

Hearing in this matter was set for May 7, 1914, but there were no appearances. Although the information at hand with regard to the Prescott Telephone Exchange is not as complete in some respects as might be desired, there seems to be no question as to the reasonableness of the increase asked for by the applicant. It appears that the business telephones are on single-party lines and that the entire system is metallic.

Earnings from exchange service amount to about \$2,200 per year, and the applicant states that the expense, not including the time of the proprietor, amounts to about \$1,200 per year. The investment is stated to be \$10,000. From such facts as we have with regard to telephone sys-

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tems of a similar character operating in other localities in the State, it appears unquestionable that the earnings resulting from present rates are, and will continue to be, insufficient to meet the operating expenses of the utility and provide adequately for depreciation and interest. Interest and depreciation on the plant alone would be from \$1,200 to \$1,400 per year. Although the expense of operation is not fully stated by the applicant, it is clear that interest, depreciation, and ordinary operating expenses will make up a total considerably in excess of the present operating revenue. The increase of from 75 cents per month to \$1.25 per month for business telephones appears reasonable, not only in its relation to the total earnings of the utility, but in its relation to the service rendered to this class of subscribers, and it will be authorized in this case.

It is, therefore, ordered, That the applicant, the Prescott Telephone Exchange, may increase its rate for business telephones from 75 cents per month per telephone to \$1.25 per month per telephone. This increase may take effect July 1, 1914.

Dated at Madison, Wisconsin, this thirtieth day of June, 1914.

In re APPLICATION OF THE MOSINEE TELEPHONE COMPANY
FOR AUTHORITY TO INCREASE ITS RATES.

Decided July 6, 1914.

**Revision of Rate Schedule—Elimination of Concessions to Subscribers
Owning Instruments—Authorization of Payment of Rental by
Company for Instruments Owned by Subscribers—
Determination of Reasonable Rental—Repairs
of All Instruments to be Made by
Company—Additional Charge
for Night Messages.**

OPINION AND DECISION.

The Mosinee Telephone Company filed application with this Commission of February 2, 1914, for authority to increase its rates.

The rates in effect at the time of the application as stated by the applicant were as follows:

	<i>Rate per month</i>
Business telephones	\$1 50
Residence telephones, private	1 00
Residence, 2-party on selective ringing, metallic.....	1 00
Residence, 4-party on interurban, metallic.....	1 00
Business, 4-party on trunk line metallic.....	1 00
Business, 2-party on metallic circuit.....	1 50
Rural, subscribers owning their telephones.....	50
Rural, company owning telephones	1 00
Rural, 3-party on grounded line.....	1 00

The application alleges that the members of the company have donated their time in order to build up and equip the business for the purpose of rendering good service to the subscribers, and that notwithstanding this fact they have been unable to receive any return on their investment in the form of dividends or any other remuneration. It is alleged further that the expenses of operation in the past have been low, due to the economical arrangement for conducting the central office and the nominal wages paid the trouble man, but that the arrangement in question cannot be enjoyed by the company in the future and that the operating expenses will therefore be increased. To meet the increased expenses and to pay a reasonable return on the investment, the company applies for authority to put into effect the following schedule of rates:

	<i>Rate per month</i>
Business telephones, 1-party, metallic.....	\$1 50
Business telephones, 2-party, metallic.....	1 25
Business telephones, 4-party, trunk line, metallic.....	1 25
Residence telephones, 1-party metallic.....	1 25
Residence telephones, 2-party, metallic.....	1 00
Residence telephones, 4-party, metallic interurban lines.....	1 00
Rural telephones, company owning 'phones.....	1 25
Rural telephones, subscribers owning 'phones.....	1 00
Rural telephones, grounded line	1 00

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The above schedule provides for a rate of \$1.00 per month for rural subscribers owning their own telephones and \$1.25 per month for those rural subscribers whose telephones are owned by the company. In order to comply with Section 1797m-90 of the Public Utilities Law, all subscribers having the same class of service must be given the same rate, irrespective of whether or not certain subscribers own a part of the equipment. A reasonable rental may be paid those subscribers owning their own equipment, however, and this seems to be the proper policy to follow in this case. In the interest of good service it appears desirable, furthermore, to have the company repair all equipment including that owned by the subscribers. Under such conditions, the rental to be paid will be restricted to a reasonable rate for interest and depreciation on the equipment owned by the subscribers. The rental allowance for these two items will amount to about \$1.80 per 'phone per year or a monthly rental of 15 cents per 'phone. It is recommended that the company keep the telephones owned by the subscribers in repair and in addition pay a rental of 15 cents per 'phone per month.

It is stated in the testimony that unlimited service is given between the hours of 7 A. M. and 10 P. M., and that a charge of 10 cents per call is made for calls between the hours of 10 P. M. and 7 A. M. Exception to the above rule has been made in the case of certain subscribers who make regularly morning calls to the depot. This exception was made primarily, it appears, because a 10-cent rate per call for those making daily early morning calls would make the charges excessive. The most equitable manner of dealing with this situation so that no unjust discrimination would result between subscribers is to give all subscribers the privilege of making early morning calls to the depot without additional charges. All other calls coming between the hours of 10 P. M. and 7 A. M. will continue to be 10 cents per call as at present.

From the foregoing, it appears that certain changes must be made in the schedule of rates applied for before

the schedule can be approved. The rates which seem best suited to the conditions are shown in Table I. This table also shows the estimated monthly revenues under the rates outlined.

TABLE I.
ESTIMATED MONTHLY REVENUES.

<i>Classes of Service</i>	<i>Number of subscribers</i>	<i>Rate per month</i>	<i>Amount</i>
One-party business, full metallic.....	15	\$1 50	\$22 50
Two-party business, full metallic.....	7	1 25	8 75
One-party residence, full metallic.....	27	1 25	33 75
Two-party residence, full metallic.....	13	1 00	13 00
Rural subscribers, full metallic.....	42	1 25	52 50
Rural subscribers, grounded lines.....	3	1 00	3 00
			<hr/>
			\$133 50
Commissions on toll messages.....			15 00
			<hr/>
TOTAL ESTIMATED MONTHLY REVENUES.....			\$148 50
Deduct rental of 24 telephones at 15 cents.....			3 60
			<hr/>
NET ESTIMATED MONTHLY REVENUES.....			<u>\$144 90</u>

With revenues of approximately \$145 per month the yearly revenues under the above schedule of rates will be about \$1,740.

A system of accounts prescribed by this Commission records the operating expenses of the company since January 1, 1914. The operating expenses for January, February and March were submitted by the applicant for the purposes of this case. These are shown in the following table:

TABLE II.
OPERATING EXPENSES.

	<i>Expenses for 3 months January, February, March, per books</i>	<i>Estimated for year</i>
Central office	\$132 29	\$529 16
Wire plant	59 81	239 24
Substation	39 95	159 80
Commercial	8 47	33 88
General	68 24	272 96
TOTAL ABOVE	\$308 76	\$1,235 04
Add:		
Taxes estimated		45 00
Depreciation 7% on \$4,000.....		280 00
TOTAL OPERATING EXPENSES		\$1,560 04

Although it is not customary to determine the annual operating expenses on the basis of the records for part of a year, the operating expenses as estimated in the above manner should represent the amount required with a reasonable degree of accuracy. Interest at 7 per cent. on \$4,000, the estimated value of the plant and equipment in this case, is \$280, making the total operating expenses \$1,840.04.

The estimated operating revenues under the schedule of rates in Table II are \$1,740. From this it will be evident that the schedule of rates will not at present yield revenues sufficient to cover the operating expenses and in addition provide a full return on the investment. It appears, however, that increases in the amount of revenues to be received should come from a larger development of the business rather than from further increase of rates.

It is, therefore, ordered, That the Mosinee Telephone Company be, and hereby is, authorized to put into effect the following schedule of rates:

One-party business, full metallic.....	\$1 50 per month
Two-party business, full metallic.....	1 25 per month
One-party residence, full metallic.....	1 25 per month
Two-party residence, full metallic.....	1 00 per month
Rural subscribers, full metallic	1 25 per month
Rural subscribers, grounded line.....	1 00 per month

Subscribers have the privilege of making early morning calls to the depot without extra charges. All other calls between the hours of 10 P. M. and 7 A. M. shall be 10 cents per call.

It is further ordered, That the company keep all equipment in repair and pay a rental of 15 cents a month per 'phone to all subscribers owning their own telephones.

Dated at Madison, Wisconsin, this sixth day of July, 1914.

***In re* APPLICATION OF THE MARQUETTE AND ADAMS COUNTY
TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.**

Decided July 16, 1914.

**Inadequate Revenue — Increase in Rates — Same Rates for Stockholders
and Non-stockholders — Employment of Experienced
Repair Man Recommended.**

OPINION AND DECISION.

Application in the above entitled matter was filed June 3, 1914. It is stated in the application that the present rate of \$6.50 per year for telephone service is too low, and that such an increase as will enable the company to meet operating expenses is desired.

Hearing was held June 26, 1914, at the office of the Commission in Madison. *J. W. Daniels*, manager of the applicant company, appeared in its behalf. No appearances were entered in opposition to the application.

From the testimony it appears that the rather low rate of \$6.50 per annum was put into effect about nine years ago, when twelve farmers got together and organized a small company. That this rate does not bring in sufficient revenues to meet operating expenses is shown by the

annual reports filed with the Commission. For the year ending June 30, 1912, the total operating revenues, including the revenues from toll and switching service, were \$2,877.20, while the operating expenses were \$3,162.66, leaving a deficit of \$285.46. For the year ending June 30, 1913, the operating revenues and expenses were respectively \$2,600.05 and \$3,795.04, leaving a deficit of \$1,195.99.

The application contained a suggestion to the effect that stockholders in the telephone company be given a rate lower than that applied to non-stockholders. In that the law prohibits a utility from charging a different rate to stockholders than is charged to non-stockholders, it will be necessary to fix a rate which will be applicable to stockholders and non-stockholders alike. At the hearing the manager stated that a rate of \$10.00 per annum would very likely be sufficient to meet the needs of the company. In the light of such information as we have at hand an annual rate of \$10.00 does not appear unreasonable. The manager places the value of the company's plant at the present time, excluding subscribers' sets which are owned by the subscribers, at \$8,000. The annual report of the company for the year ending June 30, 1913, shows a total cost of \$6,614.42. It is not clear whether or not the difference between these figures is due to additional construction since June 30, 1913. Since it is apparent that a rate of \$10.00 per annum applied to 417 subscribers (the number which the company states it has at present) will, after making adequate provisions for depreciation, allow only a fair return upon the lower valuation, it does not appear necessary to carefully check the estimate of the value of the plant at the present time.

The testimony indicates that the present practice of leaving the repairing of the lines to two directors on each line is uneconomical. It was suggested at the hearing that an experienced man be employed for the purpose of attending to the repairing of all the lines. The employment of an experienced lineman would very likely prove more satisfactory than the present practice in respect to both service

and the cost of repairing. We therefore recommend that the company employ an experienced lineman to keep the lines in good working order.

It is, therefore, ordered, That the applicant, the Marquette and Adams County Telephone Company be, and the same hereby is, authorized to discontinue its present charge of \$6.50 per year for telephone service and substitute therefor a rate of \$10.00 per year.

Dated at Madison, Wisconsin, this sixteenth day of July, 1914.

CANADA.

Board of Railway Commissioners.

IN THE MATTER OF THE APPLICATION OF THE BYRON TELEPHONE COMPANY, LIMITED, UNDER SECTION 355-360 OF THE RAILWAY ACT, FOR AN ORDER FIXING THE RATES AND TOLLS TO BE CHARGED BY THE APPLICANT COMPANY AND THE BELL TELEPHONE COMPANY OF CANADA ON THE INTERCHANGE OF BUSINESS BETWEEN THE SAID TWO COMPANIES, AND APPORTIONING THE SAME.

File No. 3839.9 — Order No. 21777.

Decided May 2, 1914.

Interchange of Business — Division of Interline Revenue.

Upon hearing the application at the sittings of the Board held in Toronto, April 24, 1914, in the presence of counsel for the applicant company and The Bell Telephone Company of Canada, and what was alleged, the parties consenting —

It is ordered, That the terms of the contract to be entered into between the applicant company and The Bell Telephone Company of Canada be, and they are hereby, approved as follows, namely:

1. Business interchanged between the Byron Telephone Company's system and points on the Bell company's system other than London, shall be handled at the established rates of the Bell company, plus the established rates of the Byron company, each company to receive its own charges.

2. Business interchanged between points on the Byron company's system and the Bell company's London exchange shall be handled at a rate of 15 cents, to be divided 7½ cents to each company.

3. The business referred to in Paragraphs 1 and 2 shall be handled over joint trunk lines between London and Byron, each company being required to construct and main-

tain one-half of the trunk lines needed to properly handle the business interchanged between the two systems.

4. If the Byron company desires to connect direct party lines to the Bell company's London exchange, the Bell company shall furnish and maintain, at its expense, necessary metallic circuits on its existing pole route from its office in the city of London to the corporate limits of the said city to connect with metallic rural circuits of the Byron company for the purpose of interchanging service, such metallic circuits so furnished by the Bell company to be and remain the property of the Bell company. A minimum of eight subscribers shall be connected to each metallic rural circuit of the Byron company.

5. The Byron company shall pay the Bell company the sum of \$8.00 per annum, payable semi-annually in advance, for each telephone set connected to these direct lines which terminate upon the Bell company's switchboard at London, which amount shall entitle the subscribers to local service to or from the subscribers of the Bell company's exchange at London, and shall also cover the necessary switching between these direct party line subscribers and the subscribers of the Byron company connected to its Byron exchange.

ONTARIO.

Railway and Municipal Board.

IN THE MATTER OF THE APPLICATION OF THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF TARBUTT AND TARBUTT ADDITIONAL, TO FIX A PRICE TO BE OFFERED TO THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF LAIRD TO PURCHASE THAT PORTION OF THE TELEPHONE SYSTEM, KNOWN AS THE LAIRD MUNICIPAL TELEPHONE SYSTEM, WHICH IS LOCATED WITHIN THE CORPORATE LIMITS OF THE TOWNSHIP OF TARBUTT AND TARBUTT ADDITIONAL.

P. F. 1883.

Decided March 19, 1914.

Purchase by Municipality of Portion of Telephone System Owned by Another Municipality — Conditions of Purchase Prescribed.

ORDER.

WHEREAS, the municipal corporation of the township of Tarbutt and Tarbutt Additional has established a telephone system under the provisions of Part II of the Telephone Act, 2 Geo. V. Cap. 38, and 3 Geo. V. Cap. 40, and is desirous of extending the said system in such manner as would necessitate the erection of poles, cables or wires upon or along the highways, upon or along which are located the poles, cables or wires of the telephone system established by the municipal corporation of the township of Laird.

AND WHEREAS, the applicant has, in accordance with the provisions of Subsection 10 of Section 17 of "The Ontario Telephone Act," applied to the Board to fix a price to be offered by the applicant to the municipal corporation of the township of Laird for that portion of the telephone system known as the "Laird Telephone System," which is located within the corporate limits of the township of Tarbutt and Tarbutt Additional.

AND WHEREAS, pursuant to the provisions of Section 9 of "The Ontario Railway and Municipal Board Act," A. B. Ingram, Esquire, vice-chairman of the Board, was authorized by the Board to report upon the said application and the said A. B. Ingram, Esquire, did, at a hearing at the town hall at MacLennan, inquire into the said application and made a report thereupon to the Board.

Upon reading the report of A. B. Ingram, Esquire, the stenographer's notes of the evidence submitted at the hearing and other material filed,

The Board orders, That, in lieu of a cash offer for the purchase of that portion of the Laird Municipal Telephone System, located within the corporate limits of the township of Tarbutt and Tarbutt Additional, the applicant shall offer to pay to the municipal corporation of the township of Laird each year an amount sufficient to pay all instalments on account of principal and interest for which the subscribers to the telephone system established by the municipal corporation of the township of Laird, whose premises are located within the corporate limits of the township of Tarbutt and Tarbutt Additional, may be liable to pay on account of principal and interest for their share of the cost of establishing the said telephone system by the municipal corporation of the township of Laird.

That the applicant shall further offer to pay, in addition to the amount stated in the preceding paragraph, to the municipal corporation of the township of Laird, an amount equal to that which may be due to the said municipal corporation of the township of Laird by the aforesaid subscribers for their share of the cost of operation and maintenance, up to and including the date upon which the transfer of the aforesaid portion of the Laird Municipal Telephone System to the applicant shall be carried into effect.

And the Board further orders, In the event of the municipal corporation of the township of Laird consenting to the sale of that portion of its telephone system already referred to upon the foregoing terms, that the applicant

and the said municipal corporation shall execute an agreement, satisfactory to this Board, embodying the terms provided in this order.

And the Board further orders, In the event of the municipal corporation of the township of Laird failing to consent to the sale of that portion of its telephone system already referred to, within thirty days from the date of this order, the applicant may, in accordance with Subsection 11 of Section 17 of "The Ontario Telephone Act," expropriate the aforesaid portion of the telephone system of the municipal corporation of the township of Laird, making such compensation therefor as may be agreed upon, or in case of failure to agree, as may be determined by arbitration under the municipal act, or the applicant may proceed to erect poles, cables or wires upon the highways situate within the township of Tarbutt and Tarbutt Additional, upon or along which the poles and wires of the municipal corporation of the township of Laird are erected.

And the Board makes no order for costs save and except that the applicant and respondent shall each pay \$15.00 for the law stamps required for this order.

IN THE MATTER OF THE APPLICATION OF THE LANARK AND
CARLETON COUNTIES TELEPHONE COMPANY, LIMITED, FOR
AUTHORITY TO INCREASE ITS CHARGES TO SHAREHOLDERS
FOR TELEPHONE SERVICE FROM \$10.00 PER ANNUM TO
\$12.50 PER ANNUM.

P. F. 2300.

Decided April 24, 1914.

**Increase in Rates to Stockholders—Lower Rates for Stockholders than
for Non-stockholders Authorized.**

ORDER.

WHEREAS, pursuant to the provisions of Section 9 of
"The Ontario Railway and Municipal Board Act," A. B.

Ingram, Esquire, vice-chairman of the Board, was authorized by the Board to report upon the said application, and the said A. B. Ingram, Esquire, did, at a hearing at the town hall, Almonte, inquire into the said application and made a report thereupon to the Board.

Upon reading the report of A. B. Ingram, Esquire, the stenographer's notes of the evidence submitted and other material filed,

The Board orders, Subject to the several conditions prescribed in this order, that leave be granted to the applicant to charge the under mentioned tariff charges for telephone service in so far as such charges may be applicable to those subscribers who are resident in any township where such tariff charge is not inconsistent with the terms of any by-law in force in any such township, or the terms of any valid agreement between such township and the applicant:

FOR RURAL PARTY LINE SERVICE.

- | | |
|-------------------------------|-------------------|
| (1) To stockholders | \$12 50 per annum |
| (2) To non-stockholders | 15 00 per annum |

And the Board further orders, That the tariff charges authorized by this order shall be subject to the terms of any contracts which may exist between the subscribers of the applicant's system and the applicant, and shall only take effect upon the expiration of such contracts as they may be terminated from time to time.

And the Board makes no order for costs save and except that the applicant shall pay \$10.00 for the law stamps required for this order.

IN THE MATTER OF THE APPLICATION OF THE BEETON TELEPHONE COMPANY, LIMITED, UNDER SECTION 31 OF "THE ONTARIO TELEPHONE ACT," FOR LEAVE TO INCREASE ITS CHARGES FOR RURAL TELEPHONE SERVICE.

P. F. 2299.

Decided May 20, 1914.

Increase in Rates for Multi-party Rural Service Granted — Conditions of Service Prescribed.

ORDER.

Upon the application of the above named applicant for an order to increase its tariff charges for rural telephone service upon party lines from \$12.00 to \$15.00 per annum, upon hearing the evidence adduced on behalf of all parties, upon reading the report of the Board's expert, the applicant's profit and loss account, statement of assets and liabilities, receipts and disbursements, and other documents filed,

The Board orders, Subject to the several conditions prescribed in this order, that the application of the above named applicant be, and the same is, hereby approved in so far as the increased tariff charge of \$15.00 per annum may be applicable to those subscribers who are resident in any township where such tariff charge is not inconsistent with any by-law in force in any such township or with the terms of any valid agreement between any such township and the applicant.

That the applicant shall on or before the fifteenth day of January in each year furnish the Board with a report setting forth: (a) the total amount standing at the credit of the fund referred to in Clause 3 hereof, on the thirty-first day of December in the preceding year; (b) the amount of such fund which has been temporarily used in the purchase of securities; (c) the names and value of the securities so purchased, together with (d) a certified statement from the bank in which such fund is deposited, show-

ing the amount standing at the credit of such fund on the last named date.

That the applicant shall keep in such form as the Board may approve, separate records of all expenditures upon the construction, operation, maintenance and renewal of its plant and equipment, and shall furnish such information in regard thereto as the Board may deem necessary, in order to satisfy the Board that the provisions of the two next preceding clauses are being carried out.

That the increased tariff charge of \$15.00 per annum authorized by this Board shall be subject to the terms of any contracts which may exist between the subscribers of the applicant's system and the applicant, and shall only take effect upon the expiration of such contracts as they may be terminated from time to time, provided, however, that the applicant shall not be required to furnish a continuous service to those of its subscribers who fail to sign a new contract agreeing to pay the said tariff of \$15.00 per annum.

And the Board further orders, That the said tariff charge of \$15.00 per annum shall only apply to subscribers of the telephone system of the applicant whose lines terminate at points where the applicant is furnishing a continuous service day and night, Sundays and holidays.

That in all cases where the said tariff charge of \$15.00 is made for rural telephone service, the number of subscribers' stations operated upon one and the same party line circuit shall not, without the consent of this Board, exceed fifteen.

That, for the purpose of providing a fund to meet the cost of the renewal of its plant and equipment, the applicant shall on December 31, 1915, and each year thereafter, set aside out of its earnings a sum equal to not less than 5 per cent. of the total value of the plant and equipment used in the applicant's business on December 31 in each such year. The fund so provided shall be applied exclusively to the cost of renewing such portion of the said plant and equipment as may from time to time be rendered neces-

C. L. 33]

sary by depreciation or obsolescence and after deducting therefrom such amounts as may have been so expended in any one year, the residual amount shall be placed on deposit in a chartered bank, as a separate account, or may be temporarily used in the purchase of such securities as the Board may approve of until the exigencies of the applicant's business renders necessary the application, as aforesaid, of such fund or any portion thereof.

And the Board makes no order for costs, save and except that the applicant shall pay \$10.00 for the law stamps required for this order.

IN THE MATTER OF THE FAILURE OF THE SOUTH BRUCE RURAL TELEPHONE COMPANY, LIMITED, A COMPANY INCORPORATED UNDER "THE ONTARIO COMPANIES ACT" TO DO CERTAIN ACTS, MATTERS AND THINGS REQUIRED BY "THE ONTARIO COMPANIES ACT."

IN THE MATTER OF "THE ONTARIO TELEPHONE ACT."

P. F. 2387.

Decided May 30, 1914.

Company Ordered to Comply with "The Ontario Companies Act."

ORDER.

The South Bruce Telephone Company, Limited, having failed to do certain acts, matters and things required by "The Ontario Companies Act," and The Ontario Railway and Municipal Board having appointed Thursday, the twenty-eighth day of May, A. D. 1914, at the village of Mildmay in the county of Bruce, to inquire into the causes and extent of such failure, and having caused the directors and shareholders of the said company to be duly notified of such appointment, and having attended at said time and place and having inquired into the said matters, finds as follows:

1. That the said company failed to issue a prospectus and to file the same with the provincial secretary.

2. That notwithstanding such failure, the said company did offer shares of its capital stock to the public for subscription, and though authorized by its said letters patent to issue only 100 shares of capital stock of the par value of \$100 each, did procure to be subscribed by 386 several persons 388 shares of capital stock, and did cause a call or calls to be made upon said persons in respect of said shares of stock so subscribed, and did procure to be paid into the company on account of such calls the sum of \$8,565.

3. That the directors of the said company failed to make an allotment of any of the shares of stock so subscribed and failed to issue certificates in respect of the same or any part thereof.

4. That the said company failed to procure from the provincial secretary a certificate that it was entitled to commence business.

5. That the said company notwithstanding its failure to do the several acts, matters and things as aforesaid required by "The Ontario Companies Act," and though authorized by its letters patent to carry on its business only in the township of Carrick in the county of Bruce, did nevertheless carry on its said business not only in the said township of Carrick, but also in the townships of Turnberry and Howick in the county of Huron, and in the townships of Culross, Kinloss and Greenock in the county of Bruce.

6. That the said company being by its said letters patent prohibited from mortgaging its assets or issuing bonds, debentures or other securities, its directors did nevertheless pass a by-law or resolution assuming to authorize the issue of the debentures of the company to the amount of \$12,000, and did pursuant to said by-law or resolution issue and sell at par, debentures of the said company to the amount of \$8,400, bearing interest at 5 per cent. per annum.

7. That in the opinion of the Board the failure of the said company to do the said acts, matters and things as aforesaid required by "The Ontario Companies Act," was due to inadvertence, error and mistake.

C. L. 33]

And it appearing further to the Board that it is expedient and necessary in the premises that the said company should do the following acts, matters and things,

The Board doth order and direct,

I. That the said company by its directors do procure to be prepared a prospectus as defined by "The Ontario Companies Act," signed by its directors, and do cause it, verified by affidavit, to be filed with the provincial secretary before issue and do cause a copy of the same to be mailed, prepaid, to each of the persons who has so subscribed for stock as aforesaid at his or her last known post-office address.

II. That the directors of the said company do allot to and amongst the persons who have so subscribed for stock, as aforesaid, 100 shares of the stock of the company in the following manner:

- (a) One share to each of the directors of the company;
- (b) One share to each fourth person in the order named upon the list of subscribers for stock on file with the Board until the said 100 shares of stock are fully allotted.

III. That the directors do issue to each person to whom a share of stock is so allotted a certificate under the common seal of the company, stating that he or she holds one share of the stock of the said company and the amount paid up thereon.

IV. That the directors do pass by-laws for the following purposes:

- (1) For the government and regulation of the company.
- (2) Authorizing an application to the Lieutenant-Governor in Council for the issue of supplementary letters patent:
 - (a) Providing for an increase of the capital stock of the company to such an amount as the needs of the company may dictate, such amount to be not less than the amount of the capital stock so subscribed as aforesaid:

(b) Permitting the company to carry on the general business of a telephone company in the townships of Turnberry and Howick in the county of Huron and in the townships of Culross, Kinloss and Greenock, in the county of Bruce:

(c) Permitting the company to mortgage its assets and to issue bonds, debentures and other securities to the extent of the requirements of the company, not exceeding one-half of its net assets.

V. That the directors do summon a special general meeting of the shareholders of the company by notice and advertisement as required by "The Ontario Companies Act" for the following purposes:

(1) The election of directors.

(2) The confirmation of the by-laws of the company passed by the directors pursuant to the foregoing paragraph.

VI. That the directors of the company do furnish to the Board satisfactory proof, under oath, of the company's compliance with the foregoing provisions of the order, and do deliver to the Board for transmission with its recommendations to His Honor the Lieutenant-Governor in Council, an application for the issue of supplementary letters patent, enlarging and extending the powers of the company as provided by the by-laws of the company passed pursuant to the terms of this order.

VII. That upon the issue of such supplementary letters patent, the company shall take the necessary steps to procure from the provincial secretary a certificate that the company is entitled to commence business as required by "The Ontario Companies Act."

PART II.

COMMISSION ORDERS, RULINGS AND DECISIONS OF INTEREST TO TELEPHONE AND TELE- GRAPH COMPANIES.

(NOTE.—Owing to lack of space, only summary statements of many of the decisions involving points of interest are printed in this Leaflet.—F.D.)

ARIZONA.

Corporation Commission.

IN THE MATTER OF THE APPLICATION OF TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY AND TUCSON RAPID TRANSIT COMPANY FOR AN ORDER AUTHORIZING SAID ELECTRIC LIGHT COMPANY TO LOAN SAID TRANSIT COMPANY \$40,000 AND TAKE ITS NOTES THEREFOR.

Docket No. 178.

Decided June 3, 1914.

Authorization of Loan by One Subsidiary to Another Subsidiary of the Same Parent Company.

ORDER.

This cause came on regularly for hearing the third day of June, 1914, upon the application of Tucson Gas, Electric Light and Power Company and Tucson Rapid Transit Company for an order authorizing said Electric Light company to loan said Transit company the sum of \$40,000 to be used by said Transit company in improvements and betterments. It appears that the capital stock of the Electric Light company and the Transit company are owned by the Federal Light and Traction Company, a corporation, having its principal place of business in the city and State of New York; that both of said applicants are under the same general management; and that the Electric

Light company supplies all electric energy used by said Transit company in the operation of its street railway system. And it further appearing that upon the twenty-third day of March, 1914, the said applicants made and entered agreements with the city of Tucson adjusting differences theretofore existing between said applicants and said city, which said agreements contemplated improvements and betterments to be made by both said applicants.

At the time said agreements were executed the city of Tucson was unwilling to enter into any agreement with said Transit company, on account of the latter's financial condition, unless the performance of said agreement was guaranteed by said Electric Light company. The said Electric Light company accordingly agreeing thereto, and under conditions existing and for the purpose of effecting settlements of differences then existing, an agreement was made and entered by and between said Transit company and said city whereby said Transit company agrees to remove its present railway tracks on Congress Street and certain parts of Stone Avenue in Tucson, and to replace same with new and suitable lines of track and pave said streets and avenues between the rails of said tracks and for a distance of one foot on each side thereof, and to extend said tracks on other streets and avenues in said city of Tucson and make certain other improvements.

And it further appears to the Commission that said Congress Street is now being paved by said city of Tucson and that a contract has been awarded for the paving of Stone Avenue, and that it will be necessary for said Transit company to immediately commence the removal and replacement of its said tracks on said streets and avenues and the pavement of its rights of way in accordance with said agreement, and within a reasonable length of time extend its railway tracks on certain other streets designated in said agreement and that the cost thereof will be approximately the sum of \$40,000.

It further appears that the financial condition of said Transit company is such that it is unable to raise said

sum of money in the open market and that such agreement is impossible of compliance unless the Electric Light company be permitted to advance said sum to said Transit company.

It seems to the best interests of the Transit company, Electric Light company and the public that said Electric Light company be permitted to loan said money as requested for the purposes designated in the application herein.

It is ordered, That Tucson Gas, Electric Light and Power Company be, and the same is hereby, authorized and permitted to advance Tucson Rapid Transit Company the sum of \$40,000, or so much thereof as may be necessary, for the purpose of enabling said Rapid Transit company to make certain improvements, betterments and extensions to its street railway system in the city of Tucson. Said indebtedness shall be evidenced by the demand promissory notes of said Rapid Transit company made payable to said Electric Light company, bearing interest at the rate of 8 per cent. per annum from the date of making thereof until paid.

Provided, however, that the said sum herein authorized to be advanced shall constitute no burden upon the consumers of said Electric Light company to be reflected in rates in any instance occasioned by any default in the payment thereof by said Rapid Transit company.

Dated at Phoenix, Arizona, this third day of June, 1914.

IN THE MATTER OF THE APPLICATION OF NEBO ELECTRIC
LIGHT AND POWER COMPANY FOR A CERTIFICATE OF CON-
VENIENCE AND NECESSITY.

Docket No. 87.

Decided June 23, 1914.

Certificate of Public Convenience and Necessity.

Application of Nebo Electric Light and Power Company for certificate of convenience and necessity to construct, maintain and operate an elec-

tric light and power plant in the town of St. Johns, Arizona. The Little Colorado Light and Power Company having water rights alleged to be susceptible to the development of power in the territory sought to be served, filed its objection, claiming prior rights.

It appeared that the water rights of the Little Colorado company might be subjected to litigation and the construction of the plant delayed. It further appeared that there was doubt as to the feasibility of the project of the Little Colorado company.

Held: That although the Nebo Electric project might not afford a fair rate of return for some time, nevertheless, so far as consumers and the general public were concerned, lower rates might be had than could be afforded by the project of the Little Colorado company.

A certificate was accordingly granted vesting in the applicant sole authority for the construction of the light and power plant as designated in the application.

Reasonable Rates — Rates Prescribed by Franchise.

Held: That the Commission would not recognize any franchise made rates but would require the submission of a rate schedule based upon the value of the property.*

OPINION AND ORDER.

This is an application of Nebo Electric Light and Power Company for a certificate of convenience and necessity to construct, maintain and operate an electric light and power plant in the town of St. Johns, Arizona.

The power site, place of appropriation, general engineering advantages and all data regarding the feasibility of the project were fully examined and investigated, not only with reference to the general plan of the proposed business, but the cost thereof.

It seems evident that the interests of the general public can best be subserved by the granting of the application herein, contingent, however, upon prompt construction of the project and completion thereof within a reasonable time.

The Little Colorado Light and Power Company have water rights, alleged to be susceptible to the development of power in the territory sought to be served, and said

* Editor's headnote.

company has resisted the application herein on account of prior rights. It develops in the testimony, however, that such water rights of the Little Colorado company may be subjected to litigation brought by other claimants and that the construction of an electric plant or system by such company would thereby be prevented.

It also appeared in the testimony that the reports of engineers to said Little Colorado company, regarding the feasibility of its project, were not encouraging, as evidenced by the testimony of Witness Whiting, at Page 16 of the transcript herein:

“Q. Did you get a reply from your engineers as to their opinion of the feasibility of the thing?

“A. Yes, it was not very encouraging. In the first place he told us that with such a small town as this we would have to figure pretty closely and carefully with any plant we proposed to erect in order to make it pay, and it was figured, if I remember rightly, that 135 B. P. would be all we could develop at this time. Practically 40 or 42 foot fall without allowing any loss at top or bottom would be all we could figure on at this time, without having to build around ledge rock work. May be, however, that when the town gets larger we could put in a 65 foot fall, but it would be very expensive.”

Any electric plant, supplying a small community, like St. Johns, with electric light and power, must of necessity be constructed along engineering lines involving the least expense compatible with good service, proper installation and development.

There will be no day load inasmuch as no industries exist in the community that will consume power, and some doubt exists relative to any profits to be obtained from a plant of this kind for several years.

Rates sufficient to bring a fair rate of return upon the reproduction value of the plant cannot be prohibitive in any instance, and we must accordingly observe carefully the cost of the initial investment.

It is our opinion, based upon engineering advice, that the Nebo Electric project may not afford a fair rate of return for some time to come, but that in any instance, as

far as the consumers and the general public are concerned, lower rates may be had than could be accorded by the project of the Little Colorado company.

We shall recognize no franchise made rates by the applicant herein, but shall require the submission of a rate schedule based upon the value of the property.

In consideration of all evidence introduced herein, it is the opinion of the Commission, and

It is ordered, That Nebo Electric Light and Power Company be, and the same is hereby, granted authority and permission to engage in the business of an electric corporation, for the purposes named in the application herein, and that public convenience and necessity requires the construction of a plant, or system, by said company, for the uses designated.

Such construction shall be completed within a reasonable time from the date hereof.

This certificate shall be construed as vesting sole authority in the applicant for the construction of said plant, as designated in said application.

Dated at Phoenix, Arizona, this twenty-third day of June, 1914.

CALIFORNIA.

Railroad Commission.

CITY OF MONTEREY v. COAST VALLEYS GAS AND ELECTRIC COMPANY.

Case No. 499.— Decision No. 1630.

Decided June 30, 1914.

Unreasonable Rates.

Complainant alleges that the present rates for gas service in the city of Monterey are unjust and unreasonable, and petitions the Commission to establish reasonable rates for such service.

Held: After thorough investigation, defendant directed to publish and place in effect within twenty days a rate of \$1.30 per thousand cubic feet for first 5,000 cubic feet, and \$1.00 per thousand cubic feet for all amounts in excess of 5,000 cubic feet per month through a single meter, with a minimum charge of 60 cents per month; gas to have an average heating value of not less than 600 British thermal units per cubic foot.

Early Deficits.

Held: That the occasion of early losses in the operation of a utility cannot tend to make such property more *valuable*, although it does make it more *costly*; that such losses must be considered, on grounds of equity, in reaching a value for rate fixing purposes, though the practice of utilities in submitting grossly exaggerated values in the hope that the Commission will "split the difference" does not tend to secure to the utility such just consideration.

Return upon Investment—Protection from Competition.

Held: That the element of hazard, when taken in connection with the establishment of a basis covering "cost of money" invested in a public utility of this character, should be considered in connection with the protection from competition given such utility by the State, through this Commission.*

APPEARANCES:

Fred A. Treat, for complainant.

Chickering and Gregory, George H. Whipple, and *Jared How*, for defendant.

* Syllabus prepared by the Commission.

REPORT.

This complaint, filed on November 10, 1913, is directed against the rates charged by defendant for manufactured gas in the city of Monterey, which rates are alleged to be unjust and unreasonable.

Complainant in this case, city of Monterey, is a municipal corporation of the sixth class, and at an election duly held on April 14, 1913, all powers of control over public utilities theretofore possessed by the city of Monterey were vested in this Commission.

Defendant's answer, filed on December 5, 1913, denies all the material allegations in the complaint involving the reasonableness of the rates for manufactured gas charged and collected by it in the city of Monterey, and maintains that the rates so charged and collected are the lowest at which it can profitably sell its commodity to said city and its inhabitants.

Coast Counties Gas and Electric Company was organized March 18, 1912, and took over, among other properties, the property of the California Consolidated Light and Power Company, which then owned a gas plant at Monterey and the distribution systems in Monterey and Pacific Grove.

The California Consolidated Light and Power Company was organized in November, 1911, with a capital stock of \$5,000,000. Its predecessor was the Monterey County Gas and Electric Company which, from 1903 to November, 1911, owned all the capital stock of the Monterey and Pacific Grove Electric Railway; owned the gas plant and system, water plant and system and electric plant and system at Salinas; and gas plant and system in Monterey and Pacific Grove. The authorized capital stock of the Monterey County Gas and Electric Company was \$750,000. Its bonded indebtedness was \$500,000 of which \$150,000 represented the underlying issue of the Monterey County Gas and Electric and \$180,000 the underlying issue of the Salinas Water and Power Company, both of which companies had operated in this field prior to their absorption by the Monterey County Gas and Electric Company.

The reason for the organization of the California Consolidated Light and Power Company and the ownership by it of the properties here in question during the brief period from November, 1911, to March, 1912, is not disclosed. As no securities were issued by this company and nothing done to affect the status of the property during the brief ownership, the reason for its organization is of no moment.

At the time the gas and electric properties of the Monterey County Gas and Electric Company were disposed of to the California Consolidated Light and Power Company, its water properties were transferred to the Salinas Valley Water Company.

The defendant herein, Coast Valleys Gas and Electric Company, was organized March 18, 1912, with a capital stock of \$5,000,000 and an authorized bonded indebtedness of \$10,000,000. The entire authorized capital stock, consisting of \$2,000,000 preferred and \$3,000,000 common stock, together with \$900,000 face value of forty-year 6 per cent. bonds, were issued and are now outstanding. The underlying bonds were taken up with the exception of two Monterey County Gas and Electric Company bonds, which have a value of \$1,000 each.

It is testified that in addition to redeeming \$500,000 in underlying bonds, the present owners paid \$400,000 for the stock of the predecessor company and assumed and paid off the floating indebtedness of \$207,000 in addition to expending \$286,137 for additions and betterments to December 31, 1913.

None of the books of the various predecessor companies were offered in evidence nor was any testimony introduced which would indicate either the book value or original cost of the properties or any portion thereof acquired by the defendant in this case, nor whether or not sinking funds for the redemption of the several issues of underlying bonds had been set up by these predecessor companies prior to the actual transfer in each case and no material evidence is in the record tending to establish what the fair or market value of the stocks and bonds of any of the predecessor com-

panies was originally or at any subsequent time. In view of the above statement it will be evident that the mere fact that so much stock and so many bonds were issued by this defendant, or even that so much money was expended, is of little assistance in attempting to determine a fair value to be placed on a particular portion of the properties so acquired for the purpose of this case.

Defendant presented at the hearing inventory, valuation, and rate reports prepared by Ford, Bacon and Davis, engineers, covering all the existing properties of the Coast Valleys Gas and Electric Company as of August 31, 1912, with additions and betterments to December 31, 1913. A summary of these reports, in so far as the gas plant and system at Monterey and Pacific Grove are involved, together with a summary of the valuation report prepared by Mr. A. R. Kelley of the Commission's engineering department, is given in the following table:

TABLE I.

	Estimated cost to reproduce new, Ford, Bacon and Davis	Estimated cost to reproduce new, A. R. Kelley
Real estate prorated to general structures.....	\$1,250 00	\$1,250 00
Real estate prorated to gas plant.....	6,666 66	6,666 66
Office buildings and general structures (prorated)...	1,750 00	1,750 00
Gas plant buildings and structures.....	8,217 00	¹ 8,706 50
Holders.....	2,289 00	2,200 00
Furnaces, boilers and accessories.....	5,513 25	5,513 25
Gas generators.....	2,383 00	2,383 00
Purification apparatus.....	3,991 90	3,961 00
Accessory equipment at works.....	1,329 65	1,221 95
Boosting and regulating apparatus.....	4,469 23	4,469 23
High pressure mains.....	4,537 02	² 3,695 37
Low pressure mains.....	42,255 84	25,878 81
Gas services.....	10,331 58	6,885 72
Paving.....	26,352 22	.....
Service regulators.....	2,017 81	1,899 25
Gas meters.....	7,211 36	6,091 90
General office equipment, etc. (prorated).....	882 92	882 92
Stable and miscellaneous equipment (prorated)....	431 10	431 10
TOTAL TANGIBLE CAPITAL LESS OVERHEAD EXPENSE.....	\$131,879 54	\$83,886 66
1. Contingencies, incomplete inventory, etc.....	\$11,037 44	\$6,300 05
2. Contractor's profit.....	12,155 14	.....
3. Engineering and supervision.....	10,937 72	.....
4. Interest and taxes during construction.....	17,431 05	.....
5. Injuries and damage.....	2,340 00	.....
6. Rights, capital and organization and going concern.....	65,800 00	.....
7. Engineering, supervision, organization, legal expenses and taxes during construction.....	.....	9,018 68
8. Interest during construction.....	.....	2,976 15
TOTAL OVERHEAD AND INTANGIBLE.....	\$119,701 35	\$18,294 88
TOTAL ESTIMATED REPRODUCTION COST....	\$251,580 89	\$102,181 54
Materials and supplies.....	1,584 00	1,584 00
Additions and betterments —		
Gas generators.....	\$5,003 00	\$5,003 00
Purification apparatus.....	2,080 00	2,080 00
Low pressure mains.....	2,110 00	2,110 00
Gas services.....	746 00	746 00
TOTAL ADDITIONS AND BETTERMENTS.....	\$9,939 00	\$9,939 00
TOTAL TO DECEMBER 31, 1913.....	\$263,103 89	\$113,704 54

¹ Including \$489.50 for an oil tank listed with electrical equipment by Ford, Bacon and Davis.

² Including three district regulators at \$125 each, not included in this item by Ford, Bacon and Davis.

It will be noted that the overhead charges estimated by Ford, Bacon and Davis amount to something over 40.8 per cent. of the sum of unit costs placed by them on the physical property and that in addition to the overhead allowances shown, intangible items, including "Rights, Capital and Organization and Going Concern," etc., are included which brings the total overhead and intangible values claimed to over 90 per cent. of the estimated bare physical cost. Not only does the defendant ask that all of these intangible items be allowed in fixing a rate to be charged by it for gas in the city of Monterey, but the Commission is also asked to allow 10 per cent. return on the full estimated reproduction cost, including all the overhead and intangible items, large appreciation in real estate values, the estimated cost of paving over mains and services, which expense was never incurred by this defendant or any of its predecessors, and, in addition, a largely increased depreciation annuity to amortize an amount said to represent the accrued deficit in depreciation reserve, from the original organization of the predecessor companies to the present time. The accrued depreciation in the gas plant and system at Monterey and Pacific Grove on August 31, 1912, as shown in a report prepared by Ford, Bacon and Davis is estimated to be \$43,980.61.

It is interesting to note the manner in which a strict reproduction new theory is utterly disregarded by the engineers employed by the company at times and again adhered to tenaciously when that theory will best serve to justify the various estimates and claims of defendant. In increasing the depreciation annuity to compensate past alleged deficits, the engineers have entirely abandoned the reproduction new theory and adopted the historic method which attempts to arrive at the original cost of the plant as it now exists.

Mr. Kelley submitted an estimate of the cost to reproduce the property new, and there appears a wide difference in opinion between Mr. Kelley and the engineers for the company as to the cost of certain portions of the plant. In so

far as the gas plant and buildings are concerned, the unit costs used by Mr. Kelley and the company's engineers compare very closely, and in several, if not the majority, of the items Mr. Kelley has accepted and used those appearing in the Ford, Bacon and Davis appraisal. The present value placed on the real estate prorated to the gas plant at Monterey, however, being one third of \$20,000, appears from the evidence to be excessive, and I am of the opinion that \$15,000 would be a very liberal allowance for the whole tract at this time, or \$5,000 to be prorated to the gas plant on the company's basis of segregation. The original cost of this property, comprising one entire block with the exception of one lot, was not made clear but was probably not less than \$2,500 or more than \$5,000.

Paving over mains and services, amounting to \$26,352.22, not including overhead, has been included in the Ford, Bacon and Davis report and very properly omitted by Mr. Kelley. This Commission has heretofore on several occasions indicated its position in regard to this item where it represents no actual expenditure made by the present or a previous owner of a property, and I do not deem it necessary at this time to discuss at length the reasons for not allowing the item in cases such as the present one.

The different unit costs used by the Ford, Bacon and Davis engineers and Mr. Kelley for street mains and services, account largely for the great difference between the two total reproduction costs arrived at, and I am of the opinion that those used by Mr. Kelley are at least liberal for the class and character of the work contemplated in his report. Mr. F. C. Millard, appearing for defendant, testified concerning the value of the gas plant and system supplying Monterey and Pacific Grove, and while the hasty manner in which his investigation of the properties was carried on rendered his report of little value to the Commission in determining the issues of this case, it recalled one point worthy of attention, namely, that some of the street mains were "converse" pipe and not the standard black pipe used exclusively in the more recent installations.

I will allow \$800 over and above the costs found by Mr. Kelley for the difference in price on pipe as noted. The labor costs used by Mr. Kelley, while much lower than those used by the company's engineers, appear from records of actual construction in Monterey and Pacific Grove to be ample even before the addition of overhead charges.

The cost of installing gas meters was a point on which Mr. Kelley differed greatly from the engineers appearing for the company, who maintained that \$2.00 was a reasonable amount to be allowed for this item. Mr. Kelley contended that 50 cents was ample, although he used 75 cents in arriving at the cost of meters installed. To my mind there can be no question but that the cost used by the company's engineers is excessive, and that the figure used by Mr. Kelley will in all probability exceed, without the addition of overhead, the actual cost to the company.

Both Mr. Kelley and the engineers for the company have, through error, included electrical instruments estimated to cost \$78.75, and this item should be deducted from both estimates after being increased for the overhead allowed in each case.

The question of overhead expense was discussed at length by engineers for the company and Mr. Kelley, and, as usual, there appeared a great difference of opinion as to the proper percentages to use in the case of each item and in the aggregate. A comparison of the percentages used is shown in the following table:

TABLE II.

	Real estate per cent.	Build- ings, etc., per cent.	Gas plant equip- ment, per cent.	Street mains, per cent.	Services, per cent.	Meters, per cent.	Tools and miscel- laneous per cent.
<i>Ford, Bacon and Davis.</i>							
Contingencies.....	0	10	*10	10	10	5	5
Contractor's profit.....	0	10	15	15	15	0	0
Engineering and supervi- sion.....	0	7½	7½	7½	7½	7½	0
Interest and taxes.....	10½	10½	10½	10½	10½	10½	10½
Apparent total.....	10½	38	43	43	43	23	15½
Actual cumulative total..	10½	43.7+	50+	50+	50+	24.7+	16+
<i>Kelley.</i>							
Contingencies.....	0	10	*10	10	10	5	5
Engineering, supervision, organisation, legal ex- pense and taxes.....	10	10	10	10	10	10	10
Interest.....	3	3	3	3	3	3	3
Apparent total.....	13	23	23	23	23	18	18
Actual cumulative total..	13½	24.6+	24.6+	24.6+	24.6+	19—	19—

*No contingencies on boilers and 5 per cent. on boosting and regulating apparatus.

I have hereinbefore referred to the fact that the general effect of the overhead percentages used by Ford, Bacon and Davis is to increase the estimated bare costs of all the gas properties in Monterey and Pacific Grove, including real estate, over 40.8 per cent., while those used by Mr. Kelley will increase the estimated costs, less overhead, over 21.8 per cent. While on the whole Mr. Kelley's overhead percentages, with the exception of that for contingencies, may be considered as being at least fair under the circumstances of this particular case, including as it does the item of "organization," it is my opinion, in view of the unit costs used, that the allowance for contingencies is entirely too high. A percentage not to exceed 5 per cent. of the estimated bare physical costs, less real estate, meters, general office equipment, tools and miscellaneous would have been amply liberal and would, in all probability, considerably

exceed the actual original cost. Mr. Kelley has allowed about $13\frac{1}{3}$ per cent. overhead on a greatly appreciated value of the real estate owned by the company, and while such an allowance may, in some measure, be justified on a strict reproduction theory, I do not believe it should be allowed as an element of value in this case.

Intangible values claimed by the defendant company, in so far as the gas properties in Monterey and Pacific Grove are concerned, are estimated by the engineers for the company at \$65,800 under the terms "Rights, Capital and Organization" and "Going Value." Using the same ratio as shown in the report prepared by Ford, Bacon and Davis for the purpose of segregating the item, "Other than Physical Property, \$65,800" into its principal component parts, it is found that the values claimed are:

Rights, capital and organization.....	\$36,370 69
Going value	29,429 31

Organized expense has been provided for by Mr. Kelley in his overhead allowance.

The item "Capital" is presumably working capital, and can be amply provided for by allowing two months' operating expense at \$3,586 on the basis of the company's statement for the year 1913, in addition to "Materials and Supplies" \$1,584, as reported. If interest for one-half of one year is allowed on construction, I can see no reason for allowing any working capital for that purpose other than materials and supplies ordinarily kept on hand.

There remains then the item of "Rights," which may be assumed to cover the cost of franchises. The evidence does not disclose what was paid for any franchise under which this company operates. Quite probably little or nothing was expended for such purpose.

The question of what constitutes "Going Value" is largely a matter of opinion and the only evidence aside from the highly theoretical assumption by the engineers for the defendant appears to be that no depreciation reserve has been set up to provide for the ultimate replacement of

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each element of physical property at the end of its useful life.

On a strict reproduction theory it is difficult to understand how the question of past deficits can be considered, or why, if such deficits actually occurred and if, contrary to the usual practice with small companies such as the predecessors of defendant, they were not occasioned by the investment of surplus earnings in plant, the present owners should be reimbursed for losses borne by former owners of the property. At any event, it is not clear to me how early losses can add to the present value of this or any other plant. The whole trouble in this and many other cases before the Commission, is that engineers representing utilities will not be consistent. Because a property has lost money certainly does not make it more *valuable*, although it of course makes it more *costly*, and the only theory upon which losses could be considered at all in rate fixing is on the theory that cost should be the basis upon which rates should be determined; and the justification for the cost basis for fixing rates is found in the fact that when any one incurs an expense for another, he has a right to expect to be reimbursed. In short, considerations of equity are the only ones that should appeal to a governmental agency in endeavoring to determine a basis upon which an earning shall be allowed. The Commission should always be ready to give consideration to every equitable claim of a utility, whether it could be forced to do so under a strict interpretation of the law or not. And on the other hand, it certainly is a peculiar attitude to be assumed by any one who desires to give or receive fair treatment, to say that considerations of equity must be controlling upon this Commission in fixing rates when such equity is in favor of the utility, but that no account should be taken nor consideration given to equity when such a procedure would tend in anywise to decrease the amount upon which an earning is desired to be made.

It should be understood by utilities and the public alike and recognized by commissions and courts, that when you

take away from an enterprise the right to determine for whom and for what price it will conduct its business, you have eliminated the possibility of applying the same rules of value as obtain in an unregulated enterprise. Value, as commercially understood, is something which cannot be determined until after the earning power is determined and the fact upon which Commissions are asked to find, when asked to find value as commercially understood, is a fact which finally has no existence until after the authority of the State has been exercised in determining the proper conditions upon which the business shall be conducted, the proper rates, and so the earning power. The sooner it is understood by the utilities that under modern conditions they are literally at the mercy of the State, the sooner they will realize that only equitable considerations are the ones that will finally have weight, and until commissions and courts representing the sovereignty of the State realize that always they should make the "ought" determine the "must" such government agencies have not become equal to their task. I do not mean to suggest that any agency should be subject to the caprice of governmental authority, but I do insist that it should be recognized as a plain fact by the utilities that they are subject to regulation and that the character of such regulation and its extent will be largely determined by the attitude of the utilities themselves.

It is inconceivable to me how any engineer or how any utility could expect public officials of any intelligence whatsoever to accept exaggerated so-called "values" such as the one here presented, wherein every principle of consistency is violated and every known method of loading resorted to in order to increase the amount upon which an earning shall be expected. If as widely divergent results can be reached by competent engineers dealing with the same subject-matter, as have here been reached, then the most that can be said is that the value of engineering aid to rate fixing is much overestimated, or that one or the other engineers, where such widely different results are ob-

tained, is mentally dishonest. I do not mean by this a reflection upon Mr. Woodbridge, the engineer who made the physical appraisal in this case, but my reflection is upon the method and those responsible for it. What the Commission would like to know is the sum of money upon which it ought to allow an earning in any case, and it will serve no good purpose and will be merely a waste of time for utilities to present an exaggerated statement with the hope that this Commission may follow a practice, too prevalent in the past, of splitting the difference between such estimate and some other which is perhaps lower. This Commission, however, should have no desire whatsoever in the matter, either that the basis for rate fixing be large or small. It should merely desire the facts, and when theories must be applied to facts, only those theories which give to the utility and the patrons what ought to be accorded should be followed.

The profit of $2\frac{1}{2}$ per cent. which defendant asks, introduces another intangible which if capitalized at 8 per cent. would amount to something in excess of \$82,000, and this brings out rather forcibly the fact that any return on an investment in or value of a property, over and above the "cost of money" is an allowance which to some extent at least provides for those necessary expenditures incidental to the construction of a plant and the creation of a going concern which would not appear in any subsequent appraisal of the physical properties. The natural or apparent hazard of the business is usually reflected in the cost of money itself, which fact is at once made apparent by a comparison between that cost where a material hazard may be assumed to exist as in the present case where it is said to be $6\frac{1}{2}$ per cent. and the cost in cases of minimum hazard as with government bonds. The hazard, actual or assumed, incidental to the creation and transaction of any business from the investor's point of view, and which view eventually regulates the price or cost of money, may be the relative security of earning power as compared with some other investment or may depend primarily upon the relative se-

curity of the principal. In any event the immediate effect of the element of hazard is apparent in the cost of money. The security of earning power is largely safeguarded by the measure of protection from competition which the State, through this Commission, can give. The security of the principal is obviously dependent at any time upon the relation which is maintained between value of the properties and the total amount of the securities issued thereupon.

Engineers for defendant contend that the company should be allowed a return of 10 per cent. on the "invested capital" over and above operating expenses (including ordinary maintenance) and an allowance for depreciation. This 10 per cent. is made up by figuring the average cost of money at $6\frac{1}{2}$ per cent. and adding to this percentage $2\frac{1}{2}$ per cent. for "profit" and 1 per cent. for "obsolescence of equipment." The term "invested capital," as used by the engineers, appears, in so far as the physical plant is concerned, to have no reference to original investment, as no evidence was introduced bearing on that subject, but in estimating the proper amount to be hereafter allowed for depreciation the original investment theory has evidently been adopted. Notwithstanding the fact that defendant admits that it has in its possession the books and records of the predecessor companies since about the time the gas plant and system was constructed, the company's engineers and officials chose to estimate "invested capital" on the basis of what a duplicate plant would cost new, including greatly appreciated land values and alleged intangible values, amounting as I have hereinbefore mentioned, to \$65,800 or almost 50 per cent. of the full estimated cost to reproduce the physical plant. To my mind it is wholly illogical, after ignoring actual historical costs, to attempt to arrive at invested capital upon a hypothetical basis not only in regard to the unit costs themselves, but in the actual process by which the property was created. Having once discarded the original cost or investment basis, and having laid claim to all appreciated values, it would appear that

the only alternative left would be to estimate present value upon the depreciated reproduction theory unless we are to depend entirely upon the amount of stocks and bonds outstanding, which latter basis would be obviously unfair under the circumstances of this particular case.

The ratio between the estimated cost to reproduce new the gas properties of defendant in Monterey and Pacific Grove, exclusive of real estate, and the depreciated reproduction cost or so-called "present value" of those properties, as shown in the valuation report prepared for the defendant company by Ford, Bacon and Davis, is 75.16 per cent. as of August 31, 1912. Upon the same theory assuming that this ratio of 17.16 per cent. is correct and that it remained the same on December 31, 1913, the present depreciated value of the property, as of that date, upon the basis of Mr. Kelley's estimate of the cost to reproduce the plant new corrected to allow for the tangible and intangible additions already referred to and disregarding for the moment the corresponding deductions, would be \$96,237.97.

The operating expenses for the year 1913, applicable to the gas business in Monterey and Pacific Grove, as set forth in statements submitted by defendant, are as follows:

TABLE III.
OPERATING EXPENSES YEAR ENDING DECEMBER 31, 1913.

<i>Production.</i>		
Superintendence	\$678 00	
Steam plant, labor and supplies	145 00	
Gas generation, labor and supplies	3,193 00	
Fuel for steam	172 00	
Oil or coal for gas	5,559 00	
Miscellaneous labor and supplies	283 00	
Repairs to structures and holders	257 00	
Repairs to furnaces, boilers and accessories	284 00	
Repairs to gas plant equipment	1,181 00	
Repairs to miscellaneous production equipment	99 00	
TOTAL PRODUCTION EXPENSE		\$11,831 00
<i>Transmission.</i>		
Repairs to mains and structures	\$3 00	
Repairs to transmission equipment	9 00	
TOTAL TRANSMISSION EXPENSE		12 00
<i>Distribution.</i>		
Superintendence	\$108 00	
Setting and removing meters and regulators	1,022 00	
Inspecting and patrolling	2 00	
Gas meter operations	7 00	
Commercial lamps, labor and supplies	49 00	
Inspection and repairs to consumers' installations	71 00	
Municipal street lamps, labor and supplies	5 00	
General labor supplies	35 00	
Repairs to mains and services	581 00	
Repairs to meters and regulators	648 00	
Repairs to municipal street lighting system	2 00	
Repairs to commercial arc lamps	31 00	
Repairs to miscellaneous distribution equipment	192 00	
TOTAL DISTRIBUTION EXPENSE		2,753 00
<i>General and Miscellaneous.</i>		
New business	\$507 00	
Commercial department, salaries and expenses	1,365 00	
Commercial department, indexing	83 00	
Commercial department, collections	76 00	
Miscellaneous commercial expense	13 00	
Salaries of general officers	954 00	
Salaries of general office clerks	211 00	
Miscellaneous general office supplies and expense	1,508 00	
Law expenses — general	173 00	
Railroad commission expense	200 00	
Injuries and damages	29 00	
Other general expense	35 00	
Insurance	323 00	
Repairs to general equipment	350 00	
Undistributed adjustment (credit)	24 00	
TOTAL GENERAL AND MISCELLANEOUS		5,803 00
Taxes		1,117 00
TOTAL OPERATING EXPENSES AND TAXES		\$21,516 00

The points most worthy of note in regard to the operating expenses as reported are the two items "Repairs to gas plant equipment, \$1,181" and "Setting and removing meters and regulators, \$1,022." The first of these items amounts to 8.6 times the corresponding expense at defendant's gas plant at Salinas, and may be considered abnormal, due possibly to some extraordinary repairs during the year. An ample allowance for this item of expense should not exceed \$200. The second item, "Setting and removing meters and regulators," equals about $3\frac{1}{4}$ times the corresponding expense per consumer at Salinas, and while it may in this particular instance be considered as a normal expense by reason of the great number of transient summer consumers at Monterey and Pacific Grove, the regular patrons of defendant should not be required to bear the additional burden thus created, but it should be met by a suitable service charge to be collected from all new consumers unwilling to sign a contract for one year. The item "Oil or coal for gas, \$5,559," represents the cost of 7,334.25 barrels of fuel oil used in the manufacture of gas at the Monterey plant, to which reference will be made hereafter.

The gross revenue received by defendant from the sale of gas in Monterey, Pacific Grove and vicinity during the year 1913 is reported to be as follows:

TABLE IV.
GAS SALES YEAR 1913

	Monterey	Monterey rural	Pacific Grove	Total
Municipal street, power and lighting	\$70 35	.....	\$44 70	\$115 05
Commercial heat, power and lighting — flat rate	39 00	.....	352 85	391 85
Commercial heat, power and lighting — metered	13,272 00	\$938 39	12,552 05	26,762 44
Prepaid gas .....	.....	.....	203 00	203 00
TOTAL SALES	\$13,381 35	\$938 39	\$13,152 60	\$27,472 34

The actual quantity of gas manufactured during 1913 at the Monterey plant is reported by defendant as 33,939,200 cubic feet and the reported sales 19,675,600 cubic feet, showing an apparent loss of about 42 per cent. The amount of gas manufactured was taken from holder measurements and checked by the amount of fuel oil used. The amount of gas sold, as reported by defendant, is in all probability a record of questionable accuracy covering the monthly meter readings during the year and apparently the amount of gas consumed by some fifty flat rate consumers has been entirely ignored. At the hearing witnesses for defendant testified that there was evidently an error in the loss as reported, and that 10 per cent. would be a reasonable loss under the conditions existing in Monterey and Pacific Grove. With this latter statement I am inclined to agree, and I do not believe that a greater loss than 10 per cent. or 15 per cent. as an absolute maximum should be charged against the consumers of gas in Monterey and Pacific Grove; however, it must be pointed out that even if we grant that the losses in this plant do not as a matter of fact exceed from 10 per cent. to 15 per cent., and that the gas manufactured was less in proportion, an inefficiency in operation and management even more startling would be evident. The point I mean to bring out is, that obviously the quantity of fuel used during 1913 is known to be substantially correct, as there can be no possible justification for a material error in this item as reported; then if the sales were as reported and the losses were, say 10 per cent., the quantity manufactured would be about 21,862,000 cubic feet, indicating a fuel consumption of over 14 gallons of fuel oil per thousand cubic feet of gas made. According to the admissions of defendant's own witnesses, the operating efficiency of the Monterey plant would, with the fuel consumption stated, be less than 68 per cent. of normal.

In view of the circumstances above related, it is evident that the reported amount of gas sold is entirely unreliable and that the only basis to use for determining what the sales actually were, with a reasonable degree of certainty, and in fairness to defendant and its patrons, is to use the

amount of fuel oil consumed during 1913 and assume a fair plant efficiency and a liberal allowance for loss in transmission and distribution. By this method, assuming a manufacturing efficiency of 10 gallons of fuel oil per thousand cubic feet of gas made and a loss of 15 per cent., the sales would have amounted to about 26,183,300 cubic feet during 1913.

It will be clear that the rate fixed in this case should be ample to enable the defendant to install a station meter at the Monterey plant and provide suitable facilities for determining (a) the quality of the gas manufactured; (b) the accuracy of consumers' meters; (c) the pressure maintained at all times at the plant centers of distribution, and (d) when necessary, the pressure maintained at any point on the distribution system or upon any consumer's premises.

I, therefore, recommend that defendant prepare and submit to this Commission, within twenty days from the date hereof, a detailed estimate of the cost of providing the additional equipment and facilities above referred to, together with a statement of the manner in which it proposes to carry out the intent of these recommendations.

Considering all the facts and circumstances connected with this case, and after carefully weighing the evidence submitted in connection therewith, I find as a fact that the present rates charged and collected by defendant for gas manufactured, distributed and sold by it in the city of Monterey and vicinity are unjust and unreasonable; and I further find that the rates and charges set forth in Table V are just and reasonable, and that said rates will, in addition to providing for all necessary operating expenses and an adequate depreciation reserve, allow an ample return on the value of defendant's property now used and useful in connection with the manufacture of gas at the Monterey plant and its distribution and sale to the inhabitants of the said city of Monterey and vicinity, including the fair value of the additional equipment and facilities which I have hereinbefore recommended that defendant provide for the improvement of service.

TABLE V.

RATE FOR MANUFACTURED OIL GAS HAVING AN AVERAGE HEATING VALUE OF NOT LESS THAN 600 BRITISH THERMAL UNITS PER CUBIC FOOT.

Applicable to all classes of consumers.

First 5,000 cubic feet per month per meter \$1.30 per 1,000 cubic feet
 Over 5,000 cubic feet per month per meter 1.00 per 1,000 cubic feet
 Minimum monthly charge per month per meter, 60 cents.

A service charge of \$1.00 will be required in all cases where an applicant for service declines to sign a contract for service for one year, but will be refunded if the applicant remains a customer of the company continuously for twelve months at one location.

I recommend the following form of order:

ORDER.

City of Monterey, a municipal corporation, having heretofore filed with this Commission its complaint alleging that the rates now charged and collected by Coast Valleys Gas and Electric Company for gas manufactured, distributed, and sold by it in the city of Monterey are excessive and unreasonable, and a public hearing having been held, and the Commission being fully advised in the premises, and basing its conclusions on findings of fact contained in the opinion which precedes this order,

It is hereby ordered, That Coast Valleys Gas and Electric Company, a corporation, publish and file with this Commission within twenty days from the date hereof, and thereafter charge and collect for gas sold and service supplied by it in the city of Monterey and vicinity, the following rates and charges which are hereby found to be just and reasonable:

RATE FOR MANUFACTURED OIL GAS HAVING AN AVERAGE HEATING VALUE OF NOT LESS THAN 600 BRITISH THERMAL UNITS PER CUBIC FOOT.

Applicable to all classes of consumers.

First 5,000 cubic feet per month through one meter \$1.30 per 1,000 cubic feet
 Over 5,000 cubic feet per month through one meter 1.00 per 1,000 cubic feet
 Minimum charge 60 cents per month per meter.

A service charge of \$1.00 will be required in all cases where an applicant for service declines to sign a contract for service for one year, but will be refunded if the applicant remains a customer of the company continuously for twelve months at one location.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of June, 1914.

CONNECTICUT.

Public Utilities Commission.

IN THE MATTER OF THE PETITION OF JOHN H. McMURRAY
et al. FOR A REDUCTION OF RATES CHARGED FOR GAS BY
THE BRIDGEPORT GAS LIGHT COMPANY OF BRIDGEPORT.

Docket No. 773.

Decided July 13, 1914.

Complaint as to Rates — Cost of Reproduction, Less Depreciation.

Upon petition asking for a reduction of the rates and charges of the Bridgeport Gas Light Company, the company submitted a valuation of its properties, based on cost of reproduction new less depreciation, of \$3,-417,034. The Commission after excluding from the company's figures an allowance for cost of organization, the expense of cutting and replacing pavement over mains not actually incurred by the company, incidental and contingent expenses, property owned by the company but not of sufficient present or future usefulness to warrant a return on its full value, including duplications, and other small reductions, including interest and taxes affected by the foregoing reductions, found the present value of the company's property to be approximately \$3,000,000.

Relation of Capitalization and Present Value.

The Commission further found that the capitalization of the company, \$2,000,000 in stock and \$1,000,000 in bonds was fairly represented by the actual value of the company's property.

Going Value.

Upon the company's request for an additional allowance for "going concern value," the Commission admitted that the company was entitled to a return upon a valuation which took into account the fact that the company was a live organization actually supplying consumers and so of more value to its owners than if it were idle or had just been constructed and was ready to solicit business but was not in actual operation.

The Commission held that no addition should be made to the full cost to reproduce new less depreciation, for value inherent in the physical property because the company is actually in successful operation; that the present value, as ascertained by the cost-of-reproduction-new-less-depreciation method, included such "going concern value"; that under any other theory the actual value on the tangible property to its owners

would be but a fraction of what it would cost to reproduce it new. The Commission further found that no additional allowance could fairly be made for going value in the sense of the capitalization of unrequited losses incurred in building up the company's business as no such losses had been suffered by this company.

Relation of Present Value to Actual Investment.

It appeared that whereas the present value of the property was found by the Commission to be \$3,000,000, the actual investment made by the stockholders of the company was \$2,450,000.

Held: That a fair return must be allowed upon \$3,000,000, the fair present value.

Return on Investment.

The Commission found that any return less than 5 per cent. of the present value would be confiscatory, and that a return of 6 per cent. would probably be protected by the courts as reasonable.

It appeared that the company, at its present rate for gas, was earning, after allowing a reasonable amount for depreciation, approximately a 6¾ per cent. return on a present value of \$3,000,000; that a reduction of 10 cents per 1,000 cubic feet in the rate would reduce the net income to approximately \$147,242.57, or less than 5 per cent. on the present value, and would consequently be confiscatory.

Considering the risk assumed, the increasing cost of operation, the better and more extended service that could fairly be required of, and furnished by, a company with a fair margin of profit above mere compensation, the Commission held that the present rate of the company was not unreasonable.

The petition was accordingly denied.*

DECISION AND ORDER.

The following petition, dated May 8, 1913, signed by John H. McMurray and other patrons of the Bridgeport Gas Light Company, was received by the Commission:

BRIDGEPORT, CONN., May 8, 1913.

To the Public Utilities Commission:

GENTLEMEN.—Bridgeport is supplied with gas for lighting and heating by the Bridgeport Gas Light Company, a corporation organized under the laws of Connecticut and authorized to sell gas for lighting, heat or power within said city, and said company is actually engaged in manufacturing, selling and supplying gas for the purpose aforesaid.

* Editor's headnote.

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The rates and charges of said Bridgeport Gas Light Company for gas supplied to its patrons and customers are unreasonable, and the price charged for said gas is unfair and disproportionate to the proper cost of delivering and manufacturing gas in Bridgeport.

Your petitioners ask for a reduction of the rates and charges of said Bridgeport Gas Light Company until such rates shall be just and reasonable.

Your petitioners assert that they are patrons of said company and are in fact patrons of said company.

JOHN H. McMURRAY.....	511 Myrtle Ave.
JOHN J. FORD.....	600 Myrtle Ave.
ALBERT MUSSLER.....	559 Myrtle Ave.
DANIEL MURTHA.....	370 Myrtle Ave.
BERNARD J. LEE.....	88 Whiting St.
EDWARD LINDERS.....	460 Hustin St.
HANS CHRISTENSEN.....	307 Ogden St.
CHAS. IVES.....	383 South Ave.
JOSEPH CARPENTER.....	668 Myrtle Ave.
DANIEL O'NEILL.....	728 Railroad Ave.
LYNN W. WILSON.....	585 William St.

This is a petition brought under Section 23 of Chapter 128, Public Acts of 1911, which prescribes a method of procedure for the regulation of rates and service of a public utility company. Upon petition and hearing had under this section the Commission may prescribe "just and reasonable maximum rates and charges to be thereafter made by such company" if it finds the rates complained of to be in fact unreasonable.

The foregoing petition was duly assigned for hearing at the common council chamber, city hall, Bridgeport, on Wednesday, July 9, 1913, at 10 o'clock in the forenoon, of which all parties in interest had due and legal notice, and at which time and place the parties appeared and testimony was offered as to the allegation of unreasonableness of the rates in question. Adjournment was thereupon taken to give opportunity to the Commission's accountant to examine the books of respondent and secure certain information desired by the Commission and by the petitioners relative to respondent's plant and equipment accounts and other details of the company's history. The case was next

heard at the office of the Commission on Friday, October 3, 1913, at which time the accountant's report above referred to was submitted and considered, and the petitioners offered further testimony and rested their case. Thereupon counsel for respondent, claiming that the petitioners had not established a *prima facie* case, made and offered to argue a motion to dismiss the petition. The Commission stated, however, informally, that it desired to secure at that time whatever facts the respondent was prepared to offer relative to the issue, and suggested that argument on the motion to dismiss might properly follow submission of such facts without prejudicing respondent's technical position. After hearing the respondent's evidence, the hearing on October 3 was adjourned, pending the preparation of briefs to be submitted later, at which time, it was agreed the Commission would also listen to oral arguments by both sides. Briefs were filed and said arguments heard on Tuesday, November 25, 1913. The case was thereupon closed, except that there was reserved to respondent the right to have made and to file later a valuation of its property if the Commission should decide on consideration of the testimony and arguments that respondent's motion to dismiss the petition should be denied.

On January 2, 1914, the Commission found that the petitioners had made out a *prima facie* case and denied respondent's motion to dismiss, and on said date a preliminary order was issued, as on file and record will fully appear, which required the respondent company to notify the Commission whether it would file a valuation as above referred to, and ordering the company also to file with the Commission a list of its salaried officers and the amount of salary of each. Respondent elected to make such valuation, which was filed with the Commission early in April, 1914. An objection was raised, however, to filing the list of salaries as ordered, and a hearing was held on April 3, 1914, on respondent's motion for the modification of that part of the order, but the Commission refused to modify the order and on April 29, 1914, said list was duly filed.

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On considering the valuation of the company's property which was made by Messrs. Ford, Bacon and Davis, engineers employed by the company upon recommendation of the Commission, there arose certain questions on which the Commission desired further information, which was furnished by the company and the appraising engineers at a public hearing at the office of the Commission, held on Thursday, May 21, 1914. Final briefs were filed by both sides on June 5, 1914, and the case was thereupon closed.

The Commission bases its finding and conclusions in this case upon the oral and documentary evidence presented at the various hearings, including the report of the Commission's accountant, the report of the appraising engineers and the regular annual reports of the company on file with the Commission.

STATEMENT OF FACTS.

Briefly, some of the more important facts are as follows:

The Bridgeport Gas Light Company was chartered in 1849 and was organized and commenced operation in 1851. In 1885 the Citizens' Gas Company was independently organized for the purpose of supplying fuel gas in the city of Bridgeport. In 1901 these two companies were merged to form the present Bridgeport Gas Light Company, the respondent herein. No satisfactory financial records of the original companies prior to the consolidation, particularly as regards expenditures under plant and equipment accounts, are now available, and although records of such expenditures by the consolidated company since 1901 are more informative, it is impossible to determine therefrom with any certainty a valuation of the company's property based upon original costs. The present value of the plant as appraised by the engineers, after deducting from the estimated cost to reproduce new an allowance for depreciation, is \$3,417.034. This estimate is as of December 31, 1913. The present capitalization of the company is \$3,000,000, consisting of \$1,000,000 par value of 4 per cent. bonds maturing in 1952 and \$2,000,000 par value of stock, on which the present rate of dividends is 8 per cent.

The present rate for gas charged by the respondent company to all consumers, excepting the city of Bridgeport, and for street lighting purposes, is \$1.10 per 1,000 cubic feet, less 10 cents per 1,000 cubic feet for payment by the tenth of the month, making the net maximum rate charged \$1.00 per 1,000 cubic feet. Prepayment meters are also adjusted to a rate of \$1.00 per 1,000 cubic feet. This is 25 cents less than the rate at the time the two companies were consolidated. Sales of gas expressed in thousands of cubic feet, ranged from 196,000 in 1902 to 560,879 for the year ending June 30, 1913. Gross earnings from gas sales in 1902 were \$234,960, and during the year ending June 30, 1913, were \$562,557. The operating expense in 1902 was \$169,414, and \$337,851 for the year ending June 30, 1913. Further statistical details of the company will be noted herein as required in the development of the Commission's finding.

GENERAL STATEMENT.

The purpose of this case is to determine whether or not the rate of the company is unreasonable, and if the rate is found to be unreasonable, to determine and prescribe a just and reasonable maximum rate to be hereafter charged. In considering whether a present established rate is reasonable or unreasonable the conclusion must be based upon conditions existing at the time the complaint is made or the decision rendered, taken in connection with all the past history of the company up to that time. If the rate is found to be unreasonable the Commission must then determine a just and reasonable maximum rate to be thereafter charged, and in the determination of such rate it is proper to consider not only the present and past history of the company (as when determining the reasonableness of an existing rate), but also to consider the probable normal growth of the company's business and the probable effect of the proposed change in rate on the sales, and the gross and net income in the future. To qualify itself for these purposes the Commission has examined the evidence rela-

tive to the present value of the company's property, the investments of the bond and stockholders in the company, the estimates of annual and accrued depreciation, the income and expenses of the company, its capitalization at the various stages of its existence, the returns in interest and dividends to the bondholders and stockholders, and sundry other related considerations.

Owing to the lack of reliable information obtainable from the company's books, it has appeared advisable in this case to have a careful valuation of the company's property made by responsible engineers. Since no appropriation is provided which would warrant the Commission in making, or having made at the expense of the State, such a valuation as here required, it was agreed by the parties that a valuation made for the company by appraisers recommended or approved by the Commission and the report of such appraisal duly checked up, would be satisfactory.

Among others, the engineering firm of Ford, Bacon and Davis, of New York, was recommended by the Commission and subsequently engaged by the company to make the appraisal. The engineers made this appraisal for rate making purposes, but without instructions or directions from the Commission as to the manner or basis of making it, or as to the different items to be included as subject to valuation.

To assist in determining the true present value of the property used and useful for supplying the public utility is the main object of the engineers' appraisal, but the methods followed by experienced engineers in performing this work differ somewhat, both in principle and theory, and the decisions and rulings of courts and commissions are by no means uniform. The firm of Ford, Bacon and Davis has had wide experience in this kind of work, however, and no questions were originally raised by either the petitioners or the respondent as to their qualifications, the method of making their appraisal or the value placed by them upon the different items appearing in their report.

The Commission, however, questioned the propriety of including certain items as part of the value upon which a return must be allowed, and questioned the basis of the valuation used in other instances, but excepting as to the items so affected, which are hereinafter more specifically mentioned, we have taken the report as showing the fair present valuation of the property appraised without specifically passing upon or approving the particular method adopted in each case.

As already stated, the engineers gave the present valuation of the company's property, based on the cost to reproduce new, less depreciation, as \$3,417,034. After careful consideration the Commission is of opinion that \$3,000,000 is a reasonable estimate of the present value of the company's property upon which it is entitled by law to earn a return. The difference between this latter figure and that of the engineers is made up of reductions of their allowance for cost of organization (to the amount of \$113,450), expense of cutting and replacing pavement over mains not actually incurred by the company (to the amount of \$165,449), incidental and contingent expenses (to the amount of \$17,000), property owned by the company, but not of sufficient present or future usefulness to warrant a return on its full present value, including duplications (to the amount of \$85,000), and smaller reductions on other less important items, including interest and taxes affected by other reductions (to the amount of \$35,000), all of which reductions total \$415,899. Every subdivision of the report has been reduced, where necessary, to satisfy the Commission that the resulting figure represents actual value now present in the company's property.

It will be noted that the present fixed capital of the company is \$2,000,000 in stock and \$1,000,000 in bonds, so that it is apparent that the capitalization is fairly represented at this time by actual value in the property of the company.

The engineers state in their report, and counsel for the respondent urges upon our attention that the estimate of \$3,417,034 includes nothing for "going concern value," as

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such. It is contended by counsel for respondent that an additional allowance should be made to cover this item before a figure can be reached which will represent the full present value of the company's property. The Commission admits that the company is entitled to a return upon a valuation which takes into account that it is a live organization actually supplying customers and so of more value to its owners than it would be if idle or just constructed and ready to solicit business, but not actually in full operation. We do not hold, however, that to the full cost to reproduce new, less depreciation, any addition should be made for value inherent in the physical property because the company is actually in successful operation. It would seem that by crediting the company with practically the full cost-to-reproduce-new-less-depreciation value, based on the engineers' report, we are already appraising the property as that of a going concern. On any other theory the allowance is too high, for if the company could be conceived of as owning all its present property but non-operating and non-productive, then the actual value of the tangible property to its owners would be but a fraction of what it would cost to reproduce it new. While we can see no reason for adding to the appraisers' figures for physical valuation anything more because the company is a going concern, we could conceive of the necessity for subtracting a "going concern value" from the cost to reproduce new in case the company were no longer successful and an appraisal were necessary in foreclosure proceedings, for instance.

The question of going concern value is, however, broader than indicated by the foregoing discussion. It involves the cost of reproduction of the business of the company, while we have heretofore considered merely the cost of reproducing the company's physical property.

The courts have very uniformly held of late that even in rate cases, consideration of such costs should be given in arriving at the figure upon which utility companies are entitled to earn a return. One of the most elaborate dis-

cussions of this question appears in the recent case of the *Kings County Lighting Company v. New York Public Service Commission for the First District*. Here the Commission reduced the company's rate without apparently giving full consideration to going concern value. The Appellate Division of the New York Supreme Court reversed the decision of the Commission on the grounds, among others, that more weight should have been given to the company's claim for going value (156 App. Div. 603). On further appeal by the Commission to the Court of Appeals, the finding of the Appellate Division was confirmed on this point and Justice Miller, who wrote the opinion, rendered March 24, 1914, treated at length on what the "going value" is and what weight must necessarily be given to it in such cases as this. He says in part:

"It takes time to put a new enterprise of any magnitude on its feet, after the construction work has been finished. Mistakes of construction have to be corrected. Substitutions have to be made. Economies have to be studied. Experiments have to be made, which sometimes turn out to be useless. An organization has to be perfected. Business has to be solicited and advertised for. In the case of a gas company, gratuitous work has to be done, such as selling appliances at less than a fair profit and demonstrating new devices to induce consumption of gas and to educate the public up to the maximum point of consumption. None of these things is reflected in the value of the physical property, unless, of course, exchange value be taken, which is not admissible in a rate case. The company starts out with the 'bare bones' of the plant, to borrow Mr. Justice Lurton's phrase in the *Omaha Water Works* case (*supra*). By the expenditure of time, labor and money, it co-ordinates those bones into an efficient working organism and acquires a paying business. The proper and reasonable cost of doing that, whether included in operating expenses or not, is as much a part of the investment of the company as the cost of the physical property." * * *

"If a deficiency in the fair return in the early years was due to losses or expenditures which were reasonably necessary and proper in developing efficiency and economy of operation and in establishing a business, it should be made up by the returns in later years. If there was a fair return from the start the corporation has received all it was entitled to, irrespective of how much of the earnings may have been diverted to the building up of the business." * * *

"The first question, therefore, to determine on this branch of the case was whether the company had already received a fair return on its invest-

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ment. If it had received such return from the start, or if in later years it had received more than a fair return, the public would already have borne the expense of establishing the business in whole or in part, and to that extent the question of 'going value' for the purpose of fixing a present rate would be eliminated; for it must constantly be kept in mind in dealing with this problem that the company is entitled to a fair return and no more. If it has already had it, that is the end of the matter. If it did not receive a fair return in the early years owing to the establishment of the business, a subsequent rate must allow for that loss or it will be confiscatory."

It is the opinion of the Commission that this expresses fairly the importance of "going concern value" as a factor in a company's valuation. It cannot be said arbitrarily that any given percentage on the valuation of the tangible property should, in all cases, be allowed, but the whole past history of the company must be examined to discover whether there actually is any net unrequited cost of developing the business which should now be capitalized in order that the company may secure a fair return. In some cases this might amount to as high as 30 per cent. of the structural cost, as in one instance cited by the respondent. In others it might amount to nothing. We must consider the facts in each case by themselves.

If we are to accept Justice Miller's opinion, above quoted, that the investors in the company are entitled to a fair return on their investments through all the years of the company's existence, it becomes necessary to ascertain what those investments and returns have actually been.

The company was authorized by its original charter to issue capital stock of not to exceed \$200,000 par value. In 1874 it was authorized by charter amendment to increase its outstanding stock to \$300,000. In 1886 it was again authorized to increase its stock to \$600,000, but previous to 1901 the actual amount outstanding never exceeded \$300,000, at which figure it stood when the Citizens' Gas Company was absorbed. In 1901 it was increased to \$1,300,000, in 1909 to \$1,600,000 and in 1913 to \$2,000,000. In 1901 the company retired an early bond issue of \$50,000 and issued new bonds to the amount of \$1,000,000, which

are still outstanding. The bond issues are immaterial to the present consideration, for it is apparent that the bondholders must have received from the start whatever return they were entitled to as interest. The inquiry now is solely as to whether the stock investments have yielded a fair return.

The evidence shows that from 1851 to 1875 no dividends were paid, all earnings above expenses being put back into the plant for extensions, etc. From 1876 to 1901, 10 per cent. dividends were paid annually. In 1901 a stock dividend of \$700,000 was declared. From 1902 to 1908 no further dividends were paid. In 1909 a stock dividend of \$350,000 was declared and additional dividends amounting to \$382,500 have been paid previous to June 30, 1913, the date of the company's latest available report. A brief computation, unnecessary to give here in further detail, will show that since 1851 there has been paid in cash and in stock dividends, which for the present purposes, at least, are equivalent to cash, nearly two and one-fourth million dollars, which, if distributed over the entire period of the company's life, would have paid over 7¾ per cent. in dividends on the stock outstanding each year. It should be noted that in this computation the return is based on the total investment of the stockholders and that interest has been allowed on the total bonded indebtedness on the assumption that both the bonds and stocks represent reasonably wise investment on which, under the most liberal theory, the investors could be entitled to a return. It might be claimed that the company was not entitled to such a liberal allowance, but the conclusion here reached is that even allowing the highest possible figure for the investment on which the return must be provided, it appears that such a return has actually been earned. The engineers' estimate of the physical value of the plant indicates that the value now present is at least equal to the actual investment of its owners, so it must be that the value of their investment has been kept unimpaired and if, as indicated above, a fair return has been received since the beginning, it is difficult to

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see how any additional allowance could fairly be made for "going concern value" as a capitalization of unrequited losses incurred in building up the company's business.

Practically the same argument is applicable in answer to the respondent's claim that allowance for "going value" should be made to offset the cost of building up the company's organization. The cost of securing customers, included in the engineers' report at \$77,200, and deducted by us in arriving at our allowance for present value, is also a part of the expense of creating the business and under the theory here accepted could be allowed as a part of the "going concern value" only when there has been an apparent deficiency in the fair returns to investors in the past. Quoting once more from Justice Miller's opinion in the *Kings County* case above cited:

"I define 'going value' for rate purposes as involved in this case to be the amount equal to the deficiency of net earnings below a fair return on the actual investment due solely to the time and expenditures reasonably necessary and proper to the development of the business and property to its present stage, and not comprised in the valuation of the physical property."

On this definition, which seems to be comprehensive and fair, there can be no allowance made in this case for "going value."

Accepting the figure \$3,000,000 as a fair allowance for the present value of the property of the Bridgeport Gas Light Company, let us compare with it the figures representing the actual investment made by the owners of the company in this property. These figures will give the actual cost to them of the property on which they now seek a return.

Previous to 1901 stock was issued for cash to the amount of \$300,000, in 1909 to the further amount of \$150,000, and in 1913 to the amount of \$400,000, making a total of stock issued for cash of \$850,000. As stated in the discussion of "going value" above, the stockholders received two stock dividends, one of \$700,000 in 1901 and one of \$350,000 in 1909, both of which fairly represented earned profits to

which they were entitled. It is immaterial whether these dividends were paid to them in cash and by them reinvested in stock of the company or whether they received their dividends in stock direct. In either case the par value of the stock issues, amounting here to \$1,050,000, is a sum representing a part of their investment in the company and is part of the cost to them of the property of the company.

The sale of the Citizens' Gas Company to the Bridgeport Gas Light Company represents a further investment of the stock and bondholders. In this case the stock and bonds were issued not for cash, but in exchange for property. To a certain extent it is the same as though the stock and bonds had been sold for cash and the proceeds invested in the assets of the Citizens' company. It is unnecessary here to review in detail the circumstances of the purchase of the Citizens' company because it is clear from the evidence that, whatever the value received, the price paid was \$300,000 in stock (later retired in exchange for a new issue of stock with par value of \$100,000) and \$950,000 in 4 per cent. bonds. The only other investment of the owners in the company was the early issue of \$50,000 in bonds, retired in 1901, at the time of the new issue of \$1,000,000. To summarize these figures, it appears that the stockholders have contributed:

\$850,000	In cash,
1,050,000	In the form of stock dividends,
100,000	Represented by property of the Citizens' Gas Company.
<hr/>	
\$2,000,000	Stock outstanding.
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The bondholders have contributed:

\$50,000	In cash,
950,000	Represented by property of the Citizens' Gas Company.
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\$1,000,000	Bonds outstanding.
<hr/>	

While it might be contended in the interest of the company that the investment of the owners was \$3,000,000, as indicated by the foregoing figures, still it is the rule of the

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courts when stocks and bonds are issued in payment for original construction, or as in this case, upon purchase of competing properties or consolidations of two or more companies, to inquire into the actual value of the property constructed or purchased, rather than to take at their face value the issues of stock or bonds which may have been made in payment. Thus, in the case of *Knoxville v. Knoxville Water Company*, 212 U. S. 1, it is stated that "bonds and stocks issued for its purchase and construction in excess of its cost, and by and to parties interested in and controlling the company afford neither measure or guide." Here the cost of the Citizens' company to the Bridgeport Gas Light Company was \$100,000 in stock and \$950,000 in bonds—securities totalling in par value \$1,050,000. This price in stocks and bonds was paid for the same property which had just previously been sold on foreclosure for the nominal sum of \$85,000, after having been valued at \$400,000 by appraisers appointed by the court in the foreclosure proceedings. Upon opening the books of the reorganized company in 1901-1902 the newly acquired property was carried to the plant and equipment account at a valuation of \$502,943.47. Even accepting this highest figure as representing the value put upon the property by the new owners, it is apparent that the actual worth of the investment was nearer \$500,000 than the \$1,050,000 in securities issued in payment. A summary of the foregoing statements shows the real cost, to the owners, of the entire Bridgeport Gas Light Company property to have been approximately \$2,450,000, thus:

\$850,000	Paid in cash for stock.
1,050,000	In stock dividends.
50,000	Paid in cash for bonds.
500,000	Represented by value in Citizens' Gas Company property.
<hr/>	
\$2,450,000	TOTAL INVESTMENT.
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We now have for the basis of the net return which the company is entitled to earn two figures, one of \$3,000,000

representing the present value of all its property, and the other of \$2,450,000 representing what the owners of the company had expended to acquire this property.

It is now necessary to consider how these two figures are to be used.

LEGAL PRINCIPLES INVOLVED.

In examining the many theories for the solution of rate making problems it is important to bear in mind that there are two distinct classes of rate cases, each involving its peculiar difficulties. The first class, and the one in which this matter belongs, comprises the cases before bodies having legislative authority where the question is whether rates established by the companies themselves are unreasonable and the other class comprises cases before the courts wherein rates established by legislative authority are examined in the light of constitutional provisions safeguarding private property from confiscatory legislation. Whatever different principles may be involved in the two classes of cases, it is at least true that any legislative made rate can be finally set aside by the courts if it is shown that the returns under such rate will be so limited as virtually to amount to a confiscation of the company's property. It follows, therefore, that whatever line of argument may guide a Commission like this in passing upon the reasonableness of a company made rate, if the rate be finally adjudged unreasonable and the Commission establishes a lower one, then the rate so established must at least be high enough to promise the company a return which will not be adjudged illegal on constitutional grounds.

The courts have defined in some detail the characteristics of a confiscatory rate, so that the problem presented to the Commission affords but few difficulties from that aspect. In other words, it is comparatively easy on the basis of the legal principles laid down by the courts, when applied to the figures accepted by the Commission in this case, to compute with some certainty what rate would be sustained. This is not saying, however, that it would be unreasonable

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for the company to charge in the first place a rate higher than such minimum rate. It rests in the discretion and judgment of the Commission, after considering all the facts, to declare whether or not an existing rate is so much higher than the minimum rate which the courts would require, as to be unreasonable, and if so, what intermediate rate it would be reasonable for the company to charge.

In considering cases similar to this the various rate making bodies have advanced certain theories for determining the reasonableness of established rates. It seems, however, to be the growing practice to rely on the principles laid down by the courts in defining the characteristics of a confiscatory rate, and to declare according to the judgment and discretion of the rate making body whether the existing rate so far exceeds such minimum rate as to be unreasonable.

In the case of *San Diego Land and Town Company v. Jasper*, 189 U. S. 439, Justice Holmes states in the opinion that,

"It no longer is open to dispute that under the constitution 'what the company is entitled to demand in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.' That is decided, and is decided as against the contention that you are to take the actual cost of the plant, annual depreciation, etc., and to allow a fair profit over and above expenses."

A rate which will pass court inspection, therefore, must yield a fair return on the reasonable present value, which here is taken as \$3,000,000. The "fair return" will vary with the circumstances of each case. The most frequently cited authority on this point is probably the decision of the United States Supreme Court in the so-called *New York Consolidated Gas* case where it was declared (212 U. S. 19) :

"There is no particular rate of compensation, which must in all cases and in all parts of the country be regarded as sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and locality; among other things, the amount of risk in the business is a most important factor, as well as the locality where

the business is conducted and the rate expected and usually realized there upon investments of a somewhat similar nature with regard to the risk attending them. There may be other matters which in some cases might also be properly taken into account in determining the rate which an investor might properly expect or hope to receive, and which he would be entitled to without legislative interference. The less risk, the less right to any unusual returns upon the investments. One who invests his money in a business of a somewhat hazardous character is very properly held to have the right to a larger return, without legislative interference, than can be obtained from an investment in government bonds or other perfectly safe security. * * *

"Taking all facts into consideration, we concur with the court below on this question, and think complainant is entitled to 6 per cent. on the fair value of its property devoted to the public use."

In view of this opinion and other recent decisions affirming the principles here laid down, it is reasonable to assume that the courts would protect the respondent in earning a 6 per cent. return, or the equivalent of the legal interest rate, if possible. This would call for a net annual income of \$180,000. There may be some grounds, however, for believing that even a less return would not be confiscatory in view of all the circumstances in this case, and while the Commission is not to be understood as holding that a less return would, in fact, be compensatory, we will assume for the present that even a 5 per cent. rate or \$150,000 net return might not be adjudged confiscatory. This, we believe is without any doubt the limit to which a prescribed rate could reduce the net income of this company and be sustained.

The petitioners apparently based their claims principally on the so-called investment or original cost theory under which any rate is unreasonable which yields more than a fair net return on the amount of the actual investment of the company now represented by property reasonably useful for the purposes of a utility. Where this theory can be applied by a rate making body and the rate approved will promise a net return equal to or in excess of a compensatory income, it might be justified. Unless it does promise such a return, however, it cannot be rigidly adhered to. A

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few figures will illustrate the application of this statement to the present case.

As shown above, the income required for compensation is at least \$150,000 and probably is nearer \$180,000. Taking the \$2,450,000 herein estimated as representing the actual cost to the investors, and if it appears that the present net return is in excess of 6 per cent. on this amount, we cannot undertake to reduce the income unless it also exceeds the \$150,000 which the law will allow the company to earn if it can. And even then, it would not be equitable to reduce the income unless it so far exceeds the minimum requirements as in the judgment of the Commission to be plainly unreasonable.

RETURNS EARNED BY THE COMPANY.

The company's annual report for the fiscal year ending June 30, 1913, the latest available, shows the apparent net income for that year to have been \$221,242.57.

Sales of gas and by-products.....	\$562,557 72	
Other income	7,509 48	
	<hr/>	
TOTAL INCOME		\$570,067 20
Operating expenses	\$337,851 65	
Other expenses	10,972 98	
	<hr/>	
TOTAL EXPENSE		348,824 63
		<hr/>
NET INCOME		\$221,242 57
		<hr/> <hr/>

This account includes an allowance of only \$30,000 for depreciation. According to the testimony this was an arbitrary allowance and not intended actually to offset the entire annual depreciation. Based on the Ford, Bacon and Davis report the respondent claims that \$67,000 would more nearly represent the actual depreciation. On the same figures the Commission computes it as a somewhat less amount and scaling the allowance down proportionately to correspond with the reduced figure, \$3,000,000, taken for present

true value, it is probable that a fair allowance for annual depreciation on the so-called "straight line" basis would be at least \$48,000. Petitioners conceded the necessity of a proper allowance for depreciation before net income could be figured, so it is unnecessary further to justify this allowance, which is certainly not excessive. This figure is \$18,000 more than that included in the above account. Reducing the apparent net income by this \$18,000 gives \$203,242.57 as the actual net income of the company for the year ending June 30, 1913. This is about \$53,000 more than the very lowest income which the law would require, and only \$23,000 above what it is reasonable to assume that the courts would allow as a compensatory return. In the view we take of this matter we must declare whether or not an excess of \$23,000 to \$53,000 above mere compensation is so unreasonable as to warrant us in lowering the rate under which this income is derived. Before making that decision, however, it is proper to consider certain possible objections which might be raised to the premises above adopted.

The Ford, Bacon and Davis valuation on which our estimate of present value is based, was dated as of December 31, 1913, while the figures showing the net income of the company are those of the year ending six months earlier. There was no testimony regarding any material variation in the company's property during these months, and the Commission believes that the figure adopted for present value is fair to both parties even when used in connection with the earlier figures for income.

The business of the year ending June 30, 1913, has been considered as representing normal present conditions. The testimony contains no implication to the contrary. The Commission has, however, considered in detail all available information regarding the business of earlier years and finds no reason for questioning the fairness of the figures used.

Regarding the consideration to be given future income and expenses, we would repeat what was stated earlier, that it is our duty to determine, in the first place, whether the

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present rate is now unreasonable and in that determination the operation of the rate during the latest period which we can examine is the chief, if not the sole criterion of reasonableness, and if on the basis of such business the rate does not appear unreasonable, it must be sustained. The only warrant for a speculation on future conditions is a finding that the present rate is unreasonable and that a new rate must be prescribed. Then it would be not only proper but necessary to consider the effect of the prospective rate in the future.

GENERAL CONCLUSIONS.

Assuming that a rate allowing a net return of \$150,000, or 5 per cent., on the value of the company's property, is the lowest rate that could be decreed in this case, without being subject to reversal on the ground of confiscation, the Commission believes that better and more satisfactory service can be furnished the public if the company has a larger margin of profit, so that necessary capital can be procured when needed for extensions and improvements.

While there is more or less uniformity as to what is the minimum rate that can be allowed without being subject to the charge of confiscation, there is less definiteness as to what should be or may be a maximum rate of return. The greater the hazard, the greater the rate of return allowable in order to attract necessary capital and give reasonable security to the investors. The risk and stability of the business conducted by the different public service companies vary according to the particular line engaged in.

For illustration, the stability and permanency of furnishing a water supply, one of nature's unchanging products, cannot be questioned. The necessity of providing transportation and communication along present lines or present lines improved is fairly assured, but to what extent the consumption may be limited by the constantly improved devices for augmenting the heat and lighting power of a given quantity of gas or to what extent the growing development of the uses of electricity may supersede gas for lighting

and other purposes is problematic, yet to some extent seems certain, and the nature of a gas plant or an abandoned or disused portion of a gas plant is such that it cannot be readily utilized for any other purpose.

The net income of the company under the present rates, for the fiscal year ending June 30, 1913, after allowing in the expense account \$48,000 for depreciation, is \$203,242.57 or approximately 6¾ per cent. on the value of the company's property, estimated at \$3,000,000.

Assuming the company's present net income to be \$203,242.57 a reduction in the rate of say 10 cents per 1,000 cubic feet would reduce the gross income and consequently the net income approximately \$56,000 based on present sales, leaving the net income \$147,242.57, or less than what has been considered necessary to avoid the charge of confiscation.

FINDING AND ORDER.

Under all the circumstances connected with this case the Commission is of the opinion that the present rate of return is fairly liberal and that should the company's business increase during the next few years in the ratio of increased income and expenses shown during the past ten years a reduction of rate should be anticipated. On the other hand, considering the risk assumed, the increasing cost of operation, the better and more extended service that can fairly be required of and furnished by a company with a fair margin of profit above mere compensation, we are of opinion that the present rate of the company is not unreasonable.

For the reasons herein stated the petition is denied.

We hereby determine and direct that notice of the foregoing finding and decree be given to ten signers of said petition and to the Bridgeport Gas Light Company, by Henry F. Billings, secretary of this Commission, by forwarding to each a true and attested copy hereof, by registered mail, on or before July 24, 1914, and due return make hereon.

Dated at Hartford, Connecticut, this thirteenth day of July, A. D. 1914.

IDAHO.

Public Utilities Commission.

IN THE MATTER OF THE APPLICATION OF THE CAMAS PRAIRIE RAILROAD COMPANY FOR PERMISSION TO PUBLISH AND PUT INTO EFFECT ON LESS THAN STATUTORY NOTICE A LOCAL FREIGHT TARIFF NAMING RATE ON TELEGRAPH CONSTRUCTION OUTFIT BETWEEN CULDESEE AND GRANGEVILLE, IDAHO.

Order No. 134 — Case No. 71.

Decided June 29, 1914.

Special Rate for Transportation by Railroad of Construction Outfit of a Telegraph Company for Use in Construction of Telegraph Line along Said Railroad Approved.

ORDER.

On June 25, 1914, the Camas Prairie Railroad Company made application to the Public Utilities Commission of the State of Idaho for permission to publish and put into effect on less than the statutory notice a local freight tariff naming a rate on the construction outfit of The Western Union Telegraph Company between Lewiston and Culdessee, Idaho, and Culdessee and Grangeville, Idaho, of ten cents per car per mile.

And, it appearing to the Commission that this movement mentioned is for the purpose of constructing a telegraph line along the line of said railroad and in which the applicant has common interest with the said telegraph company and that by establishing such rates no injury will be done to the public, and, it appearing from said application that sufficient grounds have been shown why said rate should be published and put into effect on less than the statutory notice;

It is, therefore, ordered, That the applicant be, and it is hereby, permitted to establish and put into effect the tariff above mentioned, the same to become effective on

June 26, 1914, and to continue in effect until further order of the Commission in the premises.

It is further ordered, That the said applicant file with the Commission its schedule of such rates and that it keep on file in its own offices at Grangeville, Lewiston and Culdese, Idaho, a copy thereof for public inspection at all reasonable hours.

Done in open session at Boise, Idaho, this twenty-ninth day of June, 1914.

MISSOURI.

Public Service Commission.

IN THE MATTER OF THE COMPLAINT OF C. H. CASEBOLT *v.*
SLIGO AND EASTERN RAILROAD COMPANY, IRON COUNTY
CENTRAL RAILROAD COMPANY AND SLIGO FURNACE COM-
PANY.

Case No. 165.

*Decided June 8, 1914.**

Constitutional Law — Commissions — Courts — Procedure.

The Missouri Public Service Commission performs a delegated quasi-legislative and administrative function, and the fact that it is frequently called upon to determine legal questions or follow quasi-legal procedure does not make it a court within the meaning of Article VI, Section 1, Missouri Constitution.

Due Process of Law.

The Public Service Commission Law is not violative of the Federal and State constitutional provisions against depriving persons of property without due process of law.

Trial by Jury — Procedure Before Commission.

The powers of this Commission are not of a strictly judicial nature: rather, they are administrative of delegated legislative power and in procedure utterly unsuited to trial by jury. *Held:* The provisions of the Public Service Commission Law do not infringe upon the constitutional provision guaranteeing "the right of trial by jury, as heretofore enjoyed."

Res Judicata — Jurisdiction — Proceedings Before Commission.

The doctrine of *res judicata* cannot operate to conclude the exercise of functions that are ambulatory and mutable, like those of a body administrative of legislative enactments. In the present case, proceedings had before the former Board of Railroad and Warehouse Commissioners held not to be *res judicata*, so as to preclude the jurisdiction of this Commission.

Procedure — Pleadings — Sufficiency of Complaint — Evidence.

Technical rules of pleading and evidence need not be observed in procedure before the Commission — a substantial compliance with the requirements of the Public Service Commission Law being sufficient.

* Motion for rehearing overruled June 23, 1914.

Common Carriers — Public Highways — Railroads over Three Miles in Length — Rates — Jurisdiction of Commission.

The Act of 1911, Laws 1911, Pages 161-2, declaring "any steam or electric railroad three miles or more in length" to be "a public highway" and "subject to all the laws of this State applicable to common carriers," and empowering the Railroad and Warehouse Commissioners to make rates for freight and classify and enforce the same with respect to common carriers is constitutional and converts railroads three miles or more in length, whether or not they are constructed on private property and used solely and exclusively for the purposes of the owner, into common carriers; and the mere fact that a private railroad is operated under a business charter and not technically incorporated as a railroad is not decisive of the status of such railroad.

Constitutional Law — Police Power — Condemnation of Private Property — Just Compensation — Jury Trial — Due Process of Law.

An act making all railroads three miles or more in length "public highways" and subject to the laws applicable to "common carriers" is a proper exercise of the police power of the State, which power is distinct from the condemnation of private property for public use, and does not contravene the provisions of the Constitution requiring due process of law, a judicial determination of the question whether a specified use is public or not, or that private property cannot be taken for public use without just compensation ascertained by a jury.

Policy of the Commission.

This Commission will require that to be done which moral honesty to the public and good faith in law require to be done.

Duty of Common Carriers — Public Highways — Estoppel.

Common carriers must devote their property to public use. A corporation operating as a common carrier, or possessing a road which is a public highway, or doing things equivalent to such in law, is estopped from denying the corresponding obligations and duties which by law rest on such corporations; and while a corporation cannot legally invoke a usurped law or privilege in its favor, yet if it does in fact assume to usurp such law or privilege, it will not be heard to repudiate the corresponding obligations in proceedings seeking their enforcement.

Private Corporations — When Chargeable with Duty of Public Carrier.

An industrial company which causes two common carriers to be incorporated virtually for its own purposes, and which injects between them its privately owned track so as to paralyze the usefulness of such carriers to the public, will be required to allow its privately owned

tracks to be used as a public highway connecting the two carriers, thereby making them useful to the public as common carriers.

Common Carriers—Private Corporations—Railroads—Duty to the Public—Public Convenience and Necessity—Service.

Every right granted by the public involves a corresponding duty on the part of the grantee—a public privilege and a public obligation being reciprocal. In the present case three interrelated corporations—two of which are incorporated as common carriers, the other as a private business corporation with power to construct and operate railways, etc., for the transportation of persons and freight—own and operate links of railroad trackage which are connected and form a continuous line of track several miles in length and connected with an independent common carrier. The business corporation, finding itself unable to construct and operate a private road between desired points, invoked the law of the State to create the two common carriers in order that it might secure certain corporate privileges denied private corporations; and thereafter agreements were entered into between the triune corporations covering the transportation of products of the business corporation to the exclusion of others. The rails of the business corporation extend for several miles over its private property and are so situate as to subject the rails of the two common carriers to its exclusive private purposes. Thus excluding from several thousand people much needed railroad facilities, the private corporation dominates and places in commercial servitude the entire community.

Held: The acts and declarations—threatened condemnation proceedings, crossing of public highways, transportation of freight for individuals, etc.—of the interrelated corporations have impressed upon the entire line of railroad, including that owned by the business corporation, a public use and interest as a common carrier. An order is entered requiring defendants to operate as common carriers of freight over the entire length of the roadway.

Lack of Equipment.

The mere fact that a railroad corporation has no rolling stock, or the fact that a company is primarily incorporated as a business concern, will not relieve corporations from their obligations as common carriers, provided such obligations otherwise exist.

Disclaimer of Public Obligation.

If the natural consequences of a corporation's acts subjects its rails to use as a public utility, it cannot evade responsibility by having always disclaimed being a public carrier when demand was made by persons wishing to use its road for transportation.

Specific Acts Showing Assumption of Character — Crossing Public Highways — Condemnation Proceedings — Transportation of Property.

The following acts are held to show an assumption of the character of a common carrier by corporations transporting goods by rail: Application to a county court and obtaining permission to lay rails across public roads; agreements with individuals to transport freight; instances of carriage for hire; threatening condemnation proceedings to secure necessary rights of way — the first and last being equivalent to a declaration of public use.

Contracts Excluding Public from Use of Property — Public Policy.

Contracts between interrelated companies excluding the public from the benefits of service over the tracks of common carriers are contrary to public policy and void.

Private or Public Carriers — Public Convenience and Necessity — Test.

The claim that only a limited number of persons will be benefited by the use of an existing railroad is not conclusive as to whether or not it is a private or a public carrier — the test is whether there is a real possibility of use as a matter of right by all within the sphere of service, whether these be few or many.

Common Carriers — Railroads — Passenger and Freight Service — Equipment — Facilities.

Where the evidence fails to disclose a demand for passenger service over railroads built to furnish transportation for freight and not suitably built to afford passenger service, an order may be entered directing the establishment of freight service only.*

IN THE MATTER OF THE COMPLAINT OF MCGREGOR-NOE HARDWARE COMPANY *et al.* v. SPRINGFIELD GAS AND ELECTRIC COMPANY AND SPRINGFIELD TRACTION COMPANY.

IN THE MATTER OF THE VALUATION OF THE ELECTRIC DEPARTMENT OF THE SPRINGFIELD GAS AND ELECTRIC COMPANY.

Case No. 15.

Decided June 23, 1914.†

Electrical Corporations — Unjust, Unreasonable, Discriminatory and Preferential Rates — Fair Present Value — Operating Revenues — Operating Expenses — Rates — Minimum Charges — Discount.

Complaint was filed by twenty-five corporations and business firms of Springfield alleging that the rates of the Springfield Gas and Electric

* Syllabus prepared by the Commission.

† Motion for rehearing overruled July 30, 1914.

Company for electric energy were unreasonable, exorbitant and unjust. Defendants denied that the rates were unreasonable or otherwise improper, and alleged that the rates did not produce an adequate return upon the \$800,000 invested. Complainants replied that this valuation was unreasonably high, and especially that the steam power plant at Springfield was an improper item to be allowed in the valuation, as the company had a 25-year contract for hydro-electric power and break-down service. As a further reason for excluding the power plant from the valuation, complainants alleged that the plant was not the property of defendant Springfield Gas and Electric Company, and that an attempted conveyance of the portion thereof owned by defendant Traction company to said Gas and Electric company was illegal and void. Upon full consideration of all the facts and evidence for determining reasonable and just rates for electric energy, after holding the attempted transfer of the power house null and void, and taking into consideration the contract for hydro-electric energy, the various elements of value as indicated in the opinion and including all other items of value, tangible and intangible, the fair present value of the company's present property used and useful in supplying electric energy to the public at Springfield is determined, as of September 30, 1913, to be \$300,000; the rates and prices charged for electric energy are found to be unjust, unreasonable, discriminatory and unduly preferential; the profits of the company are held to justify a reduction of 37 per cent. in the operating revenues and this reduction is sought to be effected by a schedule of rates arranged upon a sliding scale, according to a division of consumers into classes, in substance as follows: residence lighting, 8 cents per kilowatt hour for first 30 hours, 5 cents for remainder, minimum bill 75 cents per month; general lighting, 8 cents per kilowatt hour for first 30 hours, 5 cents for next 60 hours, 3½ cents for remainder, minimum bill 5 cents per month for each 60-watt equivalent of connected load, no charge less than \$1.00 per month; general power, 8 cents for first 30 hours, 5 cents for next 60 hours, 3½ cents for remainder, minimum bill 75 cents per month for each kilowatt of connected load; large light and power, 7 cents for first 30 hours, 4 cents for next 30 hours, 3 cents for next 60 hours, 2.2 cents for remainder, minimum bill \$1.00 for each kilowatt of maximum demand; street lighting, \$60.00 per annum per 7.5 ampere lamp, \$6.00 per annum per 40-watt lamp; allowing 10 per cent. discount on residence lighting, general lighting and general power, and 5 per cent. discount on large light and power if bills are paid on or before the tenth day after date thereof.

Contracts — Break-down Service — Fraud — Interest of Public in Contracts of Public Service Corporations.

By a contract, under date of December 30, 1911, the Ozark Power and Water Company agreed to deliver and sell for a term of twenty-five years

hydro-electric energy, generated at its power house on the White river, to defendant companies at Springfield. On August 16, 1912, a supplementary agreement was entered into whereby the Ozark company agreed to electrically connect its hydro-electric station on the White river with the steam power station of the Empire District Electric Company at Joplin, and to maintain said connection so as to furnish electric energy to defendant companies from either station when operated independently or together, and, in case of interruption or failure of service from the White River station, to supply energy in accordance with the terms of the original contract from the station at Joplin. Some time thereafter the provisions covering interruption or failure of service and independent or joint service were stricken out and a marginal notation made that the modification was agreed to. In the absence of testimony as to whether the modification was authorized by the parties signing the same, the absence of proof as to the authorization of the modification by the companies, the inference may be drawn that the modification took place after the institution of this litigation and the Commission holds that the modification was in fraud of the public and therefore void, making said supplementary agreement in full force and effect.

Expenditures — Valuations — Fraudulent Transfers of Property.

Excessive, unreasonable or improvident expenditures or purchases, though actually made, may be disallowed by Commissions and courts in rate-making inquiries, and any sale or transaction tainted with fraud is thereby vitiated. In the present case the transfer, by means of a tripartite agreement between defendant companies and their parent company, of the portion of the power house owned by the Traction company to the Gas and Electric company after the institution of proceedings to lower the rates charged by the Gas and Electric company and thus attempting to raise the valuation of the property of the Gas and Electric company upon which rates were to be determined, the purchase money being paid by book transactions, is held to have been in fraud of the public, and the Commission, in determining the reasonable and just rates to be charged by defendant Gas and Electric company, treats the property as though no transfer had been attempted.

Valuations — Engineers' Estimates of Values and Agreements — Disinterested Engineer.

In passing upon valuations of property in rate-making cases, the Commission is not bound by the agreements made between the engineers making the valuations, but, examining such valuations and agreements, will arrive at the facts and merits. Considerable weight is given to the estimates of a competent engineer selected by the Commission as a disinterested party.

Method of Allocation of Property Used and Useful to Two Companies.

In allocating property used by and useful to two companies, for the purpose of determining the valuation upon which to base a rate of return, the better method is to allocate (1) that useful to the first company only, (2) that useful to the second company only, and (3) that useful to both of the companies — again allocating the third item upon the basis of use. In the present case, in view of the holding that the attempted transfer of the interest in the power house by the Traction company to the Gas and Electric company was void, the Commission apportions this item on the basis of ownership prior to the transfer.

Going Value — Capitalization of Efficient Office Force.

This Commission will long hesitate before holding that the services of an efficient office trained force is an element of going value to be capitalized and added to the value of a public utility in a rate-making case.

Fair Present Value for Rate Purposes.

The valuation of each public utility for rate-making purposes must be considered on its peculiar facts in arriving at the fair present value of the property used and useful for the service of the public.

**Going Value — Good Will — Going Concern — Sale or Condemnation Cases —
Franchise Value — Rate-making Cases.**

Defendant Electric company claims that a going value of between \$60,000 and \$137,000 should be added as a distinct item to the value of the property to determine the fair present value upon which to allow a rate of return. A distinction exists in determining the value of the property of a public utility in a rate case and in a sale or condemnation case — which fixes what is known as the exchange value — going value, good will or going concern being a proper distinct item of value in the latter instances. The Commission refuses to allow a separate and distinct item for going value, but takes into consideration in fixing the fair present value of the property for rate-making purposes the fact that the plant is in successful operation as a going concern; also holding that while a franchise would be considered of great value in a sale or condemnation case, such value cannot be considered in a rate case.

Early Losses — Burden of Proof.

The burden is on the company to show by competent proof the early losses, if any. In the present case no proof of early losses was made, but the record contains much evidence showing that if there were early losses such losses have since been recouped through excessive rates of recent years and, further, that the large earnings are from the electric department and the losses, if any, from the Traction company. *Held:* No separate and distinct item of allowance for going value can be made.

Rate-making Cases — Fair Present Value — Duty of the Commission.

The duty is incumbent upon this Commission to fix the fair present value, not only fair and reasonable to the company but also to the public (the company being entitled to a fair rate on the reasonable value of the property at the time it is used for the public and the public entitled to a rate of no more than the services are reasonably worth), of the property of the public utility in determining the reasonableness of rates, after a careful consideration of all facts, opinions and the law involved — the basis of calculation in a rate case being the fair present value of the property used and useful for the public. In the present case the fair present value of the defendant Gas and Electric company's property, used and useful in supplying electric energy to the public at Springfield, as of September 30, 1913, is fixed at \$300,000.

Adequate Service — Auxiliary Steam Plant — Rate of Return.

Defendants have contracts requiring that hydro-electric energy be furnished them by the Ozark Power and Water Company from its plant on the White river and further service, whenever necessary, from the steam plant of the Empire District Electric Company at Joplin, a corporation allied with the Ozark company. Defendants maintain a steam plant at Springfield, which they claim and complainants deny is necessary for furnishing break-down service. The evidence at the October hearing established the fact that the flow of the White river was adequate for the operation of the plant thereat to generate hydro-electric energy in sufficient quantities at all periods of the year. In view of the contract calling for break-down service from the steam plant at Joplin and the duty on the part of the Ozark company to construct proper lines for the transmission of energy, it is held that the portion of the steam plant at Springfield to be transferred to the Gas and Electric company is not used or useful for the public and should not be taken into consideration to allow a rate of return.

Rates — Interest of Public in Low Production Costs.

The public is entitled to share in the advantages afforded by cheap hydro-electric energy and is not to be required to pay exorbitant rates to persons or corporations exploiting natural sources of power.

Rate of Return — Fair Present Value — Factors Determining.

After a careful consideration of the legal and contract rates of interest in this State, the hazards of the business and other factors, the Commission finds that a net return of at least 7 per cent. on the fair present value of the electric property of the Gas and Electric company as used and useful for the convenience of the public will yield a fair return in the present case. A fair and just rate of return must be determined from the facts of each case.

**Bond Discount — Capitalization — Amortization — Application of Proceeds
— Excessive Rates — Jurisdiction of Commission.**

Where the proof discloses excessive rates sufficient to have amortized a bond discount, or fails to show the proceeds from the sale of the bonds were (but established the fact that all the proceeds were not) applied to the property of the utility in question, the Commission will not authorize the amortization or capitalization of said discount from the earnings of such property. *Quære*: Should this Commission authorize the amortization of bonds over which it has no supervision as to issuance and sale?

Valuations — Rates — Amortization of the Cost of this Proceeding — Commission's Departments at Service of Public.

Defendants, while admitting the present rate schedule unjustifiable in all respects, seek permission to amortize in three years from the earnings of the electric department the cost of this proceeding — \$50,000. *Held*: \$18,000 is a reasonable allowance for the expenses in defending this proceeding; the Commission stating that it is not bound by this allowance in other cases and that its engineering and accounting departments are at the service of the public utilities in rate investigations.

Public Service Commission — Reasons for Creation — Expert Witnesses.

One of the reasons for the creation of this Commission was to have unbiased and disinterested expert witnesses to make valuations and give their conclusions thereon.

Corporations — Board of Directors — Citizenship — Residence.

Not less than three members of the board of directors of private corporations shall be citizens and residents of this State.

Operating Expenses — Expenditures — Arbitrary Charges Made by Parent Company — Salaries and Commissions — Duty of Commission.

Excessive, unreasonable or improvident expenditures made by a public utility, though actually made, may be disallowed by commissions and courts in rate-making cases, and every presumption, except the barest legal presumption, is entertained against arbitrary charges by a holding company against its subsidiary companies. It being the duty of the Commission to strictly limit the amount of such charges, in the present case an operating charge for "managerial services" for management by "long distance" by the holding company is disallowed, and no charge is allowed for commissions, except for service actually rendered.

New Business.

Expenses in securing new business should be limited to reasonable amounts. In the present case an allowance of \$2,500 per year is held to be reasonable.

Accounting — Depreciation Account — Operating Charges — Power of the Commission.

Before any of the earnings of a public utility can be distributed among the owners an adequate amount should be set aside as an operating charge to cover depreciation, which amount is to be determined by the Commission according to the special facts involved. In the present case 5 per cent. of the present fair value of the property should be set aside for depreciation.*

* Syllabus prepared by the Commission.

NEW YORK.

Public Service Commission — Second District.

**SUPPLEMENTAL PETITION OF THE LAWRENCE PARK HEAT,
LIGHT AND POWER COMPANY UNDER SECTION 68 OF THE
PUBLIC SERVICE COMMISSIONS LAW, AS TO CARRYING TWO
ELECTRIC WIRES ACROSS THE PONDFIELD ROAD IN THE
VILLAGE OF BRONXVILLE.**

Case No. 4240.

Decided June 23, 1914.

**Public Convenience and Necessity — Approval by Commission of Revocable
License for Construction of Wires across Street Not Required —
Approval of Commission Required for Construction of Conduits.**

ORDER.

This Commission by order dated May 20, 1914, having determined that a permit granted by the board of trustees of the village of Bronxville, Westchester County, to The Lawrence Park Heat, Light and Power Company to carry one pair of lighting wires across the Pondfield Road in said village was in the nature of a revocable license, approval of which by this Commission was unnecessary; and said company having filed with this Commission a supplemental petition stating that it is doing the work necessary to carry one pair of lighting wires across said road in conduits beneath the surface of the road; and it appearing to the Commission that the construction of these conduits changes the character of the permit and what is now being done is the exercise of a franchise; and this Commission hereby determining from the papers filed that such construction and the exercise of said franchise are necessary and convenient for the public service,

Ordered, That this Commission hereby permits and approves The Lawrence Park Heat, Light and Power Company to construct in the village of Bronxville, Westchester

COUNTY, COLLECTS beneath the surface of the Pondfield Road and the placing therein of one pair of lighting wires for furnishing the Colonial building with electricity and hereby permits and approves the exercise of rights and privileges under a franchise therefor received by The Lawrence Park Heat, Light and Power Company from the board of trustees of the village of Brookville September 9, 1913, as amended December 9, 1913.

Dated June 23, 1914.

IN THE MATTER OF THE COMPLAINT OF MATHEW TAYLOR OF WESTFIELD, CHAUTAUGUA COUNTY, AGAINST SOUTH SHORE NATURAL GAS AND FUEL COMPANY, ASKING FOR AN EXTENSION OF NATURAL GAS MAINS OF SAID COMPANY TO SUPPLY COMPLAINANT'S RESIDENCE AND PREMISES WITH NATURAL GAS.

Case No. 4369.

Decided July 21, 1914.

**Extension of Mains of Natural Gas Company — Jurisdiction of Commission
— Extension Ordered on Condition that Complainant Obligate Himself and Successors to Take Service for Five Years and to Pay at Least the Sum of \$40.00 per Year.**

ORDER.

The above named petitioner having heretofore duly presented his verified petition to this Commission asking for an order directing the respondent, South Shore Natural Gas and Fuel Company, to extend its gas mains along Bliss Street in the village of Westfield from the present terminus of its said mains to a point in said Bliss Street opposite the residence of said petitioner, the distance of said extension being about nine hundred and fifty feet; and the answer of the respondent having been duly filed with the Commission alleging that such extension was unnecessary and the requirement thereof would be unreasonable and unjust;

And a hearing having been duly held in this case by the Commission before Commissioner Hodson in the city of Buffalo on the fifth day of July, 1914, and on subsequent days to which said hearing was duly adjourned; and upon said hearings said petitioner having duly appeared in person and by the *Honorable A. B. Ottaway*, of counsel; and the said respondent company having also duly appeared by *Mr. W. E. Carroll*, the president of and receiver for the said South Shore Natural Gas and Fuel Company, and by *Mr. George Clinton, Jr.*, of counsel;

And upon said hearings, it satisfactorily appearing to the Commission that the said respondent now has a franchise for the laying of service pipes for the distribution of natural gas in all of the streets of the village of Westfield, granted by the local authorities of said village, and that all of the territory over which said extension is asked is within the village of Westfield, but is far removed from the thickly settled portion of said village, and the residence of the petitioner is upwards of nine hundred and fifty feet from the intersection of said Bliss Street with Spring Street where the mains of said company are now laid;

And the said petitioner having made an offer in said hearing that because of the fact that such extension would at the present time be largely for his benefit, he would agree that on the making of said extension to his said residence he would take the gas from the respondent for a period of 5 years from the time of the commencement of such service and pay therefor not less than \$40.00 per year;

And the said respondent having raised the legal question on the construction of said franchise that there is no requirement in said franchise that said company shall make extension of its line to all parts of said village and to all of the inhabitants thereof, and further, that this Commission has no power or jurisdiction in the premises to require the extension asked for; and it further appearing from such proofs and proceedings that, in certain legal proceedings pending in the Supreme Court of the State of New York, the said William E. Carroll was duly ap-

pointed and is now acting as the receiver for the respondent company, South Shore Natural Gas and Fuel Company;

Now, therefore, it is ordered, 1. That the objection made by the respondent that this Commission is without legal authority to require an extension of its lines within the village of Westfield be, and the same hereby is, overruled.

Ordered, 2. This Commission finds and determines that the clause in said contract known as Subdivision 4 does not specifically require the said respondent to make such extensions and give gas service to all the inhabitants of the village of Westfield, but that the language used in said subdivision relates to the price to be charged for said gas.

Ordered, 3. That the respondent, the South Shore Natural Gas and Fuel Company, and said William E. Carroll, as receiver thereof, be and they hereby are ordered and directed to make extensions of the gas mains of said respondent from the present terminus thereof at or near the corner of Spring and Bliss Streets in the village of Westfield along said Bliss Street to a point at or opposite to the residence of the petitioner, Mathew Taylor, in said Bliss Street; that such extension be made with such size pipes as shall be sufficient and adequate for the service of gas to said petitioner and such users of said gas along said intervening territory on said Bliss Street as may hereafter seek such service; and the proper connections be made between such extensions and the service pipes of the respondent now located and terminating at or near said corner of Spring and Bliss Streets, and that such work be completed on or before the tenth day of August, 1914; on condition, that the said complainant first file with the said receiver of said respondent his written statement or agreement whereby the said complainant shall obligate himself, his successors and assigns, to take the service of gas from said mains for at least a period of five years and pay at least the sum of \$40.00 per year; which said sum of \$40.00 shall first be applied to the payment of the regular rates and charges for such service of gas, and the

C. L. 33]

balance thereof, if any, shall be considered as a reimbursement to said respondent and the receiver thereof, to apply upon the cost of such extension.

Ordered, 4. That the respondent and said receiver thereof be and they hereby are directed to notify this Commission on or before the twenty-fifth day of July, 1914, as to their intention to comply with the terms of this order.

Dated at Albany, July 21, 1914.

PENNSYLVANIA.

The Public Service Commission.

C. S. GOERLICH AND J. J. SHONK *v.* THE BETHLEHEM CITY
WATER COMPANY.

No. 123.

Decided June 2, 1914.

Justifiable Discrimination.

Held: That the allowance of a greater discount to consumers on streets where competition exists than to those on streets where no competition exists is not illegal discrimination.*

APPEARANCES:

H. A. Cyphers, for the complainants.

Charles A. Snyder, J. Davis Brodhead, O. P. Bechtel,
for the respondent.

REPORT.

PENNYPACKER, *Commissioner:*

The complaint in the above case sets forth that "The Bethlehem City Water Company charges two different prices for the same service in the same borough," that it "charges more to certain citizens of Bethlehem Borough than to others through different rates of discount for prompt payment," and that "on streets of borough where Bethlehem Borough has water mains the Water company allow 40 per cent. discount and on other streets only allow 25 per cent."

The respondent filed an answer in which it was alleged "That no discrimination or rebate or drawback or discount is allowed to any particular person or corporation, except as stated in the published rates of said Water company." These published rates contained the following provision: "All above rates are subject to 25 per cent. discount if paid within thirty days from date of bill. * * *

* Editor's headnote.

an additional discount of 15 per cent. is allowed to consumers on the following streets in the borough of Bethlehem, West Side: Water Street, Hill Street, Prospect Avenue, between Conestoga Street and Third Avenue; on Second Avenue between Prospect Avenue and Broad Street; on Third Avenue between Prospect Avenue and Broad Street; on Union Street between Monacacy Bridge and First Avenue."

From the testimony taken at the hearing the following facts are found: The Bethlehem City Water Company is a corporation which was chartered prior to 1884. It has a capital stock of \$500,000; it has a bonded indebtedness of \$667,000, and a plant which has cost over \$1,250,000. It has never declared any dividend on the stock and its earnings have been expended in payment of the interest on the bonds and in extending the plant. Its water supply is obtained from the Lehigh River and from springs, is then filtered in its filtering plant and it furnishes an adequate supply of good soft water. Its net earnings are about \$30,000 per annum.

West Bethlehem was originally the village of Hanover in Lehigh County. The respondent extended its water mains to this village and began to supply water to it February, 1886. The village was subsequently incorporated as the borough of West Bethlehem and was consolidated with Bethlehem in Northampton County, August 16, 1904. The borough of Bethlehem has its own water plant. Its supply of water is obtained from artesian wells and this water in hardness, as compared with that of the respondent, is as 265 to 65. In 1913 the borough of Bethlehem extended its water mains to West Bethlehem, laying them upon the streets which have been above designated, and proposed to supply water at rates lower than those of the respondent. Thereupon the respondent as a matter of self protection and in order to meet the competition, made the additional discount of 15 per cent. for prompt payment to consumers along the streets which have been described. There was no evidence to show and it was not

contended that the rates established by respondent were excessive or unreasonable. It was, however, contended that the additional discount of 15 per cent. for prompt payment allowed to consumers on one street and not to consumers on another street, only a square away, constituted a discrimination within the prohibition of Paragraph "a," Section 8 of the Act of July 26, 1913. The persons benefited by this discount number 100. The total number of customers of the respondent company in West Bethlehem is 957.

The question raised under the facts so found is whether or not the additional discount allowed to certain consumers and not to all, is such a discrimination as the Act of 1913 was intended to prevent. There is much of merit in the position of the respondent. It has invested large sums in its plant and has for thirty years at least supplied the people with a necessity of life without any return made to its stockholders. It now finds the territory it had occupied invaded and its rates presumed to be reasonable, in the absence of evidence to the contrary, assailed. It will be observed that the greater or lesser compensation forbidden by the Act of 1913 is that of a charge "for a like and contemporaneous service under substantially similar circumstances and conditions." While it is manifestly the purpose of the act that public service companies should be supervised and controlled, and that everything in their conduct unreasonable or unfair should be prevented, there is nothing to indicate any intention to destroy vested interests or to hamper the proper exercise of the powers conferred upon such companies.

In the case of *Hoover v. Pennsylvania Railroad Company*, 156 Penn. 220, the Supreme Court of Pennsylvania in construing the Act of June 4, 1883, permitted a charge of a lower rate of freight upon coal transported to a manufacturing establishment from which the railroad received manufactured goods for transportation than to a coal dealer. The court said the act "prohibits only discrimination which is undue or unreasonable and the prohibited

discrimination is further limited by the consideration that it must be for a like service from the same place upon like conditions and under similar circumstances. If, therefore, the discrimination in a given case is upon conditions which are not like and circumstances which are not similar the Act is inapplicable." It has been held that in determining the question as to discrimination in railroad rates under the terms of the Interstate Commerce Act the fact of competition is material for consideration. In *Railroad Company v. Behlmer*, 175 U. S. p. 671, it was said "all competition provided it possessed the attributes of producing a substantial and material effect upon traffic and rate making was proper under the statute to be taken into consideration," and in 181 U. S. Reports, p. 18, it was said "the only principle by which it is possible to enforce the whole statute is the construction adopted by the previous opinions of this court, that is, that competition which is real and substantial, and exercises a potential influence on rates to a particular point brings into play the dissimilarity of circumstance and condition provided by the statute, and justifies the lesser charge to the more distant and competitive point than to the nearer and non-competitive place, and that this right is not destroyed by the mere fact that incidentally the lesser charge to the competitive point may seemingly give a preference to that point and the greater rate to the non-competitive point may apparently engender a discrimination against it."

In the present case with respect to the streets to whose residents the greater discount was allowed by the respondent, there was competition of a serious character. To these residents another supply was offered at lower rates. The undisputed testimony is that it was necessary "to meet their rates or lose the business entirely." To lose the business would be to render valueless the investment in that part of the plant. The competition was the more threatening because of the fact that it had the strength and power of the municipality to support it. As to what constitutes such competition as will create a dis-

similarity of circumstances and conditions must be determined from the facts of each case as it arises. After giving careful consideration to the ascertained facts and the situation as it exists in West Bethlehem, it is our conclusion that such dissimilarity between the conditions upon the streets named and the others exists as to make the prohibition of the statute inapplicable. It follows that the complaint should be dismissed and it will be so ordered.

ORDER.

This case being at issue, upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

Now, to wit, June 2, 1914, *it is ordered*, That the complaint in this proceeding be, and it is, hereby dismissed.

PENNSYLVANIA UTILITIES COMPANY v. LEHIGH NAVIGATION ELECTRIC COMPANY.

Case No. 200.

Decided July 9, 1914.

Public Convenience and Necessity.

Held: That where a company has been incorporated before the passage of The Public Utilities Act, but has not begun the exercise of its rights, the Commission has no authority to prevent it from entering upon territory prescribed by its charter although this territory is already occupied by another public service company rendering adequate service.*

APPEARANCES:

W. U. Hensel and *William J. Turner*, for the Lehigh Navigation Electric Company.

J. R. Geyer and *E. E. Beidleman*, for the Pennsylvania Utilities Company.

* Editor's headnote.

OPINION.

PENNYPACKER, *Commissioner*:

The petition of the complainant sets forth that it is a corporation duly incorporated under the laws of Pennsylvania, having the right, by its charter, and by purchases of and mergers with other corporations "to supply light, heat and power, or either of them, by electricity" to certain townships of Pike, Monroe and Northampton Counties, and to the boroughs of Stroudsburg, East Stroudsburg, Bangor, East Bangor, Pen Argyl, Wind Gap, Bath, Nazareth, Glendon, Portland and the City of Easton; that it has been furnishing electric light and power to these municipalities for periods running from three to twenty years; that its system of distribution and local supply are sufficient to provide service to the territory so occupied by it; that the respondent, the Lehigh Navigation Electric Company, was formed by the merger of certain electric companies, and, by its charter, approved January 6, 1913, was authorized to do business in, *inter alia*, certain townships of Monroe and Northampton Counties; that it has, apart from securing its chartered rights, done nothing in these two counties; that the respondent, since July 26, 1913, "has proceeded to invade the territory thus occupied and served by your petitioner;" that the territory covered by petitioner's corporate franchise "is now occupied by it with electric plants representing a large investment; that it is prepared and ready to serve the entire community, and to serve, at as low a rate as can be furnished by any one, consistent with a proper service," and that the respondent "is about to invade the said territory for the purpose of carrying on a ruinous competition which will result in no benefit to the public, or to those financially interested."

The petition set out twelve instances of negotiations, or attempted negotiations, by the respondent, with municipalities and individuals within the territory described. It averred that the respondent "is thus seeking, attempting and intending to enter the territory thus controlled and

served by your petitioner; that this is not necessary for the public convenience or necessity, nor for the proper and efficient serving of the public," and that the respondent, prior to the passage of the Act of July 26, 1913, had no right in the premises, other than accrued to it by virtue of having obtained charters and "had not begun to exercise any of its rights, powers, franchises or privileges."

The petition prays the Commission to "order, decree and direct that the said defendant refrain from invading or attempting to invade the territory already occupied and served by your petitioner, and from disturbing and attempting to disturb the business relations already existing or about to be created between the members of the public of that district and your petitioner and to cease and withdraw all operations in your petitioner's district."

In its answer filed, the respondent, *inter alia*, "demurs to the whole of said petition and for cause of demurrer shows—(a) That upon the face of said petition the petitioner is not entitled to the relief claimed; (b) That this Commission has no jurisdiction, under the provisions of the act approved July 26, 1913, to grant the relief claimed by the petitioner."

The question which is raised by the averments of the petition and the answer in the nature of a demurrer, may be stated as follows: Has the Commission authority to prevent a corporation which is a public service company, incorporated before the passage of the Act of July 26, 1913, but which has not begun the exercise of its rights, from entering upon the territory prescribed by its charter, because of the fact that this territory is already occupied by another public service company rendering adequate service?

It is plain that if this question be answered in the affirmative, and the authority so conferred be exercised by the Commission, the result is a complete nullification of the charter of the respondent. If an electric light company cannot enter upon the territory in which it has been granted power by the legislature to exercise its franchises and

privileges, it can do nothing. It is frankly conceded that there is no specific grant of such authority to the Commission to be found in the language of the act. Since the act went into effect, public service companies can only be incorporated, upon the determination of the Commission, that the approval of the application is "necessary or proper for the service, accommodation, convenience or safety of the public." When a public service company, acting within the rights granted by its charter, undertakes to make a contract with a municipality, the subject matter of the contract is still within the control of the Commission. The act provides that "No contract or agreement between any public service company and any municipal corporation shall be valid unless approved by the Commission." This provision seems plainly to apply, no matter at what time the public service company may have been incorporated, but there is no provision of the act which goes so far as to empower the Commission, in specific language, to exclude a public service company incorporated prior to the going into effect of the act, from entering upon the territory to which its franchises apply. It may want to supply individuals within that territory. It may, with the consent of the Commission, supply municipalities there. There is, on the other hand, a specific provision bearing upon the subject which seems to deny such authority. Section 12 of Article III provides:

"Every public service company shall be entitled to the full enjoyment and exercise of all and every the rights, powers, and privileges which it lawfully possesses, or might possess, at the time of the passage of this act, except as herein otherwise expressly provided."

It was argued, however, with much vigor, that Section 2 of Article III does give necessary authority. This section provides as follows:

"Upon the approval of the Commission, evidenced by its Certificate of Public Convenience first had and obtained, and not otherwise, it shall be lawful for any proposed public service company — (a) To be incorporated, organized or created, * * *;" "(b) To begin the exercise of any right, power, franchise, or privilege, under any ordinance, municipal contract or otherwise."

The contention is that since the respondent had only been chartered and had not begun to exercise any of its powers before the act went into effect, it is not now entitled to begin such exercise without the approval and certificate of the Commission. To give such a construction to the paragraph would be to bring it into conflict with Section 12 of the same article heretofore cited. The whole act must be considered and such part of it be given its due weight, in order that a consistent construction be reached, if it be at all possible, from the language used. It is entirely possible to give full weight to the words of this paragraph without being compelled to reach the conclusion contended for by the complainant.

Under Section 1 of Article I of the act, public service companies consist of two classes, *i. e.*, corporations and "all persons engaged for profit in the same kind of business."

Paragraph "a" of the section under consideration applies only to the incorporation, organization and creation of chartered companies. It, therefore, became necessary to add a paragraph to cover the other class of public service companies, consisting of persons engaged for profit in the same kind of business. This appears to have been the purpose of Paragraph "b." Such an interpretation harmonizes all of the related sections of the act, and is strengthened by the use of the word "proposed." This descriptive word cannot be applied to a corporation in existence with all of its powers and franchises before the passage of the act. It fits exactly the case of a combination of persons, or an individual intending to engage for profit in that kind of business, but who do not become a public service company until they begin the exercise of the rights conferred upon them.

For these reasons, it is the opinion of the Commission that it has no authority to prevent the respondent from entering upon the territory described in its charter, and that, assuming the facts alleged in the petition of the complainant to be true, the complaint ought to be dismissed.

ORDER.

This case being at issue, upon petition and answer on file, which answer, *inter alia*, sets up the want of power and authority in the Commission to grant the relief prayed for, and the case having been duly heard and submitted by the parties, and the Commission having, on the date hereof, made and filed of record a report containing its conclusion upon the aforesaid question of law, which said report is hereby referred to and made a part hereof:

Now, to wit, July 9, 1914, *it is ordered*, That the prayer of said petition be refused, and that the said petition be, and the same is, hereby dismissed.

American Telephone and Telegraph Company
Legal Department
15 Dey Street, New York City

COMMISSION LEAFLET No. 34

Recent Commission Orders, Rulings and Decisions
from the following States:

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Connecticut	Nebraska
Florida	New Hampshire
Georgia	New Mexico
Idaho	New York
Illinois	Ohio
Indiana	Oklahoma
Kansas	Pennsylvania
Massachusetts	Virginia
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and

Interstate Commerce Commission

OCTOBER 1, 1914.

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PART I.
COMMISSION ORDERS, RULINGS AND DECISIONS
DIRECTLY AFFECTING TELEPHONE AND
TELEGRAPH COMPANIES.

CALIFORNIA.

Railroad Commission.

IN THE MATTER OF THE APPLICATION OF CAMPBELL TELEPHONE COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF CAPITAL STOCK.

Application No. 1147 — Decision No. 1664.

Decided July 11, 1914.

Authorization of Stock in Substitution for Stock Issued Without Authority — Issue of Additional Stock Denied without Prejudice Pending the Securing by Applicant of Certificate of Public Convenience and Necessity Authorizing Extension of System.

Applicant authorized to issue twenty-seven shares of its capital stock of the par value of \$10.00 per share in lieu of stock heretofore issued without the Commission's consent, proceeds of which were used for extensions to system. Application to issue additional stock, denied without prejudice, pending the securing by applicant of a certificate of public convenience and necessity authorizing the extension of its system.

APPEARANCE:

L. D. Bohnett, for applicant.

REPORT.

GORDON, Commissioner:

This is an application by Campbell Telephone Company for authority to issue 27 shares of its capital (common) stock in lieu of 27 shares heretofore unlawfully issued, and to further issue additional stock from time to time as needed for the purpose of constructing lines and installing telephones for new subscribers.

The applicant is a California corporation and owns a system of rural or farmer lines which it is operating as a public utility in the vicinity of Campbell, Santa Clara County. It does not operate an exchange switchboard, but connects its lines with an exchange which is owned and operated by The Pacific Telephone and Telegraph Company in the town of Campbell. The Pacific company performs the switching service and collects from the applicant a yearly switching charge for each of its subscribers.

The applicant, Campbell Telephone Company, has an authorized capitalization of \$10,000 divided into 1,000 shares of the par value of \$10.00 each. Heretofore it has sold its stock at a price calculated to provide only sufficient money to construct the lines and purchase the telephones necessary to install service for those buying stock. This cost has been ordinarily \$27.50, or in those cases where special equipment has been provided the cost has been \$28.50, and in either case 3 shares of stock were issued for the amount paid. As of the date of this application, a total of 265 shares have been sold for the aggregate sum of \$2,387, inclusive of the 27 shares which were unlawfully issued. This entire amount has been expended in constructing lines and in purchasing and installing telephones.

The application and the testimony show that the applicant was not aware that the law requires Commission approval for the sale of stock by public utilities, and since the entire proceeds from the sale of these 27 shares have been expended in providing telephone service for their purchasers, I shall recommend that the reissue of these 27 shares be authorized.

So far as that portion of the application is concerned which seeks permission to issue and sell additional shares of stock, the testimony shows that The Pacific Telephone and Telegraph Company is by its lines serving certain portions of the territory which is also served by this applicant's lines, and that neither company has secured a certificate of public convenience and necessity authorizing extensions in this territory. I am accordingly of the

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opinion that permission for the issue and sale of additional stock by the applicant should be withheld until it has filed with the Commission the usual application for a certificate of public convenience and necessity and has received the Commission's order thereon.

The testimony shows further that the rate which the applicant pays to the Pacific company for each of its subscribers contemplates a continuous day and night service, although continuous service is not maintained at the Campbell exchange. I would suggest to the applicant that this matter be formally directed to the notice of the Pacific company and, if that company will not voluntarily grant a satisfactory adjustment, that the Commission be applied to for relief.

I recommend the following order:

ORDER.

Application having been made by Campbell Telephone Company for an order of this Commission authorizing it to issue 27 shares of its capital stock in lieu of an equal number of shares heretofore issued without the prior authorization of this Commission, in ignorance of the provisions of the Public Utilities Act, and for authorization to issue and sell additional shares from time to time as needed for the purpose of building lines and installing telephones for new subscribers; and the entire amount of money received from the sale of the said 27 shares heretofore issued having been used for purposes of building lines and installing telephones for the purchasers of said 27 shares of stock; and a hearing having been held, and it appearing to the Commission that the purposes for which the proceeds of the sales of the 27 shares of stock were not in whole or in part reasonably chargeable to operating expenses or to income; and it further appearing to the Commission that, as set forth in the opinion accompanying this order, the territory into which applicant desires to extend is served in part by lines owned and operated by The Pacific Telephone and Telegraph Company, and that appli-

cant has not applied for a certificate of public convenience and necessity for authority to extend its lines, as provided by Section 50 (a) of the Public Utilities Act;

It is hereby ordered, That Campbell Telephone Company be, and it hereby is, granted authority to issue 27 shares of its capital stock upon the following conditions and not otherwise, to wit:

1. Said 27 shares of its capital stock shall be issued to the following persons in substitution for an equal number of shares shown to have been issued as follows:

Date		Num'te of certificate	Number of shares	Issued to	Value
January	14, 1913.....	85	3	S. G. Roy.....	\$28.50
March	6, 1913.....	87	3	A. S. Collins.....	27.50
March	7, 1913.....	88	3	Mrs. N. P. Phillips.....	27.50
May	31, 1913.....	93	3	Harry Baehr.....	28.50
June	23, 1913.....	94	3	Thos. Spellman.....	28.50
September	30, 1913.....	84	3	G. H. Higbee.....	27.50
October	6, 1913.....	96	3	F. and L. Downing.....	28.50
December	26, 1913.....	98	3	A. Ferro.....	27.50
January	10, 1914.....	99	3	E. A. Colby.....	28.50

2. Before said stock shall be issued, the certificates of stock in lieu of which said stock is hereby authorized to be issued shall be called in by applicant and cancelled.

And it is hereby further ordered, That pending the application for and the issuance by the Commission of a certificate of public convenience and necessity permitting the construction of additional lines or the further extension of present lines into territory at present served by The Pacific Telephone and Telegraph Company, as more specifically referred to in the opinion accompanying this order, that portion of the application herein for authority to issue and sell additional shares of stock from time to time as needed for the purpose of constructing lines and installing telephones in new territory is dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eleventh day of July, 1914.

FLORIDA.

Railroad Commission.

IN THE MATTER OF THE DOUBLE CHARGE FOR TELEPHONE SERVICE TO THE DUTTON PHOSPHATE COMPANY AND THE DUTTON COMMISSARY COMPANY.*

File No. 3618-A—Order No. 451.

Decided August 8, 1914.

Imposition of Penalty for Unjust Discrimination.

OPINION AND ORDER.

In pursuance of notice No. 49, dated July 9, 1914, this matter came on for consideration on the thirtieth day of July, 1914, at 10 o'clock in the morning at the office of the Railroad Commissioners of the State of Florida in the city of Tallahassee. After hearing the testimony of *Mr. W. M. Dale*, as a witness for the complainants and *Mr. E. E. Voyle*, who appeared in behalf of the East Florida Telephone Company, without sworn or written answer, the said matter was taken under advisement.

And now on this day, the said matter coming on for further consideration, the Railroad Commissioners of the State of Florida do find that the Dutton Phosphate Company and the Dutton Commissary Company occupy the same office at Newberry, Florida; that the said companies are separate corporations but under the same management and control; that the East Florida Telephone Company is rendering a telephone service to the said office and that the telephone connection in the said office and the service rendered thereto were at the request of the Dutton Phosphate Company; that the telephone instrument in the said office is the property of the Dutton Phosphate Company; that it

* For the previous history of this case, see Commission Leaflet No. 32, at page 276.—Ed.

is the custom of the said East Florida Telephone Company to require each subscriber to furnish his own instrument; that the said East Florida Telephone Company has heretofore required the payment of \$6.00 per month for the use of the telephone connection in the said office and has charged and collected the said amount of \$6.00 in that it has required the Dutton Phosphate Company to pay for the use of the said telephone connection the sum of \$3.00 per month and has required the said Dutton Commissary Company to pay for the said telephone connection the sum of \$3.00 per month; and that the said telephone company insists upon its right, upon failure of either the said Dutton Phosphate Company or the said Dutton Commissary Company to pay the \$3.00 charged against it, to discontinue the service to the said office; and that the said telephone company has not made a like charge of \$6.00 per month for the use of any telephone connection to any other subscriber or subscribers, but has charged only the sum of \$3.00 per month for its other telephone connections; and that the said telephone company has charged and collected from other persons receiving a like service the sum of \$3.00 per month.

The said Railroad Commissioners are of the opinion that under the circumstances shown the said East Florida Telephone Company is not justified in charging and collecting from the Dutton Phosphate Company and the Dutton Commissary Company each the sum of \$3.00 per month for the use of the telephone connection in the office of the said Dutton Phosphate Company.

Wherefore, it is considered, ordered and adjudged, By the Railroad Commissioners of the State of Florida that the East Florida Telephone Company did, within twelve months last past, exact, charge and collect for the rental or use of its telephone line, instruments, appliances and apparatus in the office of the Dutton Phosphate Company at Newberry aforesaid certain rates, charges, tolls or rentals, which are unjust, unreasonable and unjustly discriminatory, and that the said East Florida Telephone Company

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is therefore guilty as charged in the second paragraph of the said notice No. 49.

And it is further considered, ordered and adjudged, By the Railroad Commissioners of the State of Florida, that the said East Florida Telephone Company has thereby incurred a penalty, which is hereby fixed and imposed in the sum of \$100, which it is required to pay promptly to the State Treasurer, according to law.

Done and ordered by the Railroad Commissioners of the State of Florida, in session at their office in the city of Tallahassee, the capital, this eighth day of August, A. D. 1914.

IN THE MATTER OF CONCESSIONS BY TELEPHONE COMPANIES TO
MUNICIPAL, COUNTY AND STATE GOVERNMENTS, AND TO
ORGANIZATIONS AND OTHER PERSONS AND CONCERNS.

File No. 3618—D.

Dated August 25, 1914.

Concessions Allowed Employees of Telephone Company or of Other Common Carriers, or Persons Engaged Exclusively in Charitable and Eleemosynary Works or Persons Specially Mentioned or Referred to in Statute—Concessions to Municipalities Denied—Discrimination between Charitable Organizations as to Free and Reduced Rate Service Prohibited.

RULING.

To all companies and individuals owning or operating telephone service within the State of Florida:

Inquiry instituted by the Railroad Commissioners revealed the fact that many abuses had crept into the operation of telephone business in the way of free or reduced rates, contrary to the provisions of Chapter 6525, Laws of Florida, approved June 6, 1913. The Commissioners referred the matter to counsel for legal opinion upon this subject. That opinion deals with the case of the Southern Bell Telephone and Telegraph Company in particular, but is applicable to every company owning and operating a

telephone service in this State. The opinion in full is as follows:

OPINION OF COUNSEL.

Upon the Southern Bell Telephone and Telegraph Company's statement of full and part concessions in the State of Florida, dated June 22, 1914.

The statement in question shows the free service and reduced service rendered by the company within the State of Florida, and this opinion deals with the validity of such concessions.

A letter from Judge H. E. W. Palmer, general attorney for the company, calls my attention to the case of *New York Telephone Company v. Siegel Cooper Company*, 202 New York 502 (96 N. E. 109). In this case it was held that certain concessions to cities were lawful, but the decision was distinctly based upon the fact, that the concessions were not forbidden by statute. The court held that, in the absence of statute, the concessions were lawful at common law.

The Florida situation is distinctly different. We are not proceeding under the common law, but under a statute which definitely declares that "no telephone company or telegraph company subject to the provisions of this act shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by either telephone or telegraph between points in this State," except in certain specified cases.

This language is clear and unmistakable. No free or reduced service can lawfully be allowed except to those within specifically enumerated classes. The excepted classes are designated by the Florida statute as follows: "*Provided*, that it shall be lawful in this State to issue, exchange passes and franks and grant free and reduced service and contract for exchange of services by and between common carriers as defined by and provided for in the Act of Congress entitled 'An Act to Regulate Commerce' and acts amendatory thereof and supplemental thereto."

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Our act can only be construed then by reference to the Act to Regulate Commerce. We find in the first section that a common carrier is forbidden to allow free or reduced service,

“ Except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men’s Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers’ and Sailors’ Homes, including those about to enter and those returning home after discharge; to necessary caretakers of live stock, poultry, milk and fruit; to employees on sleeping cars, express cars and to linemen or telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *And provided further*, That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this act: *Provided further*, That the term ‘employees’ as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and exemployees traveling for the purpose of entering the service of any such common carrier; and the term ‘families’ as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood, and minor children during minority of persons who died, while in the service of any such common carrier.”

It is noticeable that many of the foregoing except¹ are not applicable to telephone and telegraph comp²

This is due to the fact that the exceptions were as originally enacted applicable to carriers of persons and property. By later amendments they were made applicable also to telegraph and telephone companies. In some cases, as for example, newsboys on trains, the provisions are utterly inapplicable to telephone companies. In other instances the application to telephone companies cannot be strictly made, but can be made by analogy.

Proceeding to examine the list of concessions submitted in the company's statement, I note that many of the concessions are to "employees." Presuming that this means employees of the company, we find that they are specifically included among the foregoing exceptions, and therefore employees may be lawfully allowed free or reduced service.

In other cases, the concession is indicated to be by way of exchange. For example, in case of the Western Union Telegraph Company and Southern Express Company, exchanges are expressly included within the list of exceptions, and therefore these concessions are lawful.

Among the excepted classes are "persons exclusively engaged in charitable and eleemosynary works." This class clearly embraces such institutions as the Associated Charities and the Salvation Army and probably the other organizations within the same group, to whom concessions have been allowed under the general designation "charity." The only question on this point would be whether an allowance to the Associated Charities and like organizations could be considered as made to "*persons*." I think, however, that concessions to these organizations are clearly lawful.

In some other cases, it does not appear from the statement whether the concession is lawful or not. For example, on Page 2, under the designation "religious," I find the name "E. G. Weed." There is nothing to indicate the capacity in which he is entitled to this concession. From my own knowledge, however, I have no question that the reference is to Bishop Weed, and that the concession is allowed to him as a minister of religion, which is entirely

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lawful under the statute. I recognize the names of other ministers who are entitled to the same concession upon the same theory. Taking the entire statement I find under the designation "religious" the names of some persons whom I do not happen to know. They may be ministers and doubtless are, but the question can only be settled by ascertaining the facts.

A doubt arises in such cases as the Church Club of Jacksonville, to which a concession is allowed under the designation "religious." It could scarcely be contended that an allowance to the Church Club is equivalent to an allowance to a minister of religion or to a charitable institution. This is another case, however, where actual ascertainment of the facts is necessary to a determination of the validity of the concession. There are instances of the same kind which will be recognized upon examination, where final conclusions must depend upon the knowledge which the commissioners have or can secure as to the particular case.

There are other instances where the statement contains no indication whatever that the concession is lawful. For example, throughout the statement are many allowances shown under the designation "agreement with city." I understand this to mean that the company has an agreement with the city of Pensacola, incorporated in the company's franchise, by which the city has the right to designate certain persons to receive free service, and that numerous concessions have been granted under this agreement to persons not included in the statutory list of exceptions. There is nothing in the list of exceptions, or elsewhere in the telephone and telegraph act to justify these concessions, and, therefore, the case is subject to the full force of the statutory provision, which is that "No telephone or telegraph company * * * shall directly or indirectly give free or reduced service," except to those within the enumerated classes.

The same appears to be true as to those concessions marked "contributions" and "exchange for member-

ship," where free or reduced service is rendered to boards of trade, fair associations, etc. However laudable the support of these institutions may be, the statute apparently makes no provision for such cases.

Another class of concessions is shown in the statement under the designation "municipal." These cases present the most serious difficulty to be found in the consideration of the statement before me. It must be borne in mind that under the Act of 1913, it is lawful in this State to grant free or reduced service, etc., to the extent defined by and provided for in the Federal Act to Regulate Commerce.

The question then is, to what extent does the Act to Regulate Commerce permit free or reduced service *by telephone companies?*

Prior to 1906 the free or reduced service that might be rendered by a carrier, both in the handling of property and the transportation of passengers, was prescribed by Section 22 of the Act to Regulate Commerce, but by the Hepburn Act in 1906 a paragraph was added to Section 1 of the original act which fully covers the allowance of free or reduced service in the transportation of passengers and in my opinion repeals the original Section 22 so far as it affects the passenger service, leaving effective only this provision: "That nothing in this act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, State or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat."

Neither of these sections had reference originally to telephone service, since such service was not affected by the act as it then stood.

However, by the amendment of June 18, 1910, the original act was so enlarged as to embrace, for certain purposes, service by telegraph, telephone and cable.

There are many provisions of the act not applicable to telephone lines and here arises the question whether those provisions of the act which govern the allowance of free or reduced service are applicable to telephones.

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Looking to these provisions, we find that what is left of Section 22, the part not repealed by the Hepburn Law, has reference to "the carriage, storage or handling of *property*," while Section 1 authorizes free or reduced service in connection with the transportation of passengers.

Since the telephone business involves neither the "carriage, storage or handling of property," nor the "transportation of passengers," we are justified in the conclusion that no provision is made by the law for free or reduced service by telephone companies unless it is made by special amendment elsewhere.

On this point I find in that paragraph of Section 1 which relates to free or reduced service this provision:

"And provided further, That this provision shall not be construed to prohibit the privilege of passes or franks or the exchange thereof with each other, for the officers, agents, employees and their families, of such telegraph, telephone and cable lines."

Allowing this provision the most liberal scope possible, I have assumed that it was designed to so enlarge Section 1 as to allow free or reduced service by telephone companies in the cases enumerated in the list of exceptions in that section which is quoted above.

Since there is an express provision for the purpose of extending Section 1 to embrace free service by telephone companies and no such provision affects Section 22, I conclude by like reasoning that the privileges of free or reduced service granted by Section 22 apply only to carriers of passengers and property, and do not extend to telephone service.

If this last conclusion is correct, the concessions designated "municipal" are not authorized.

I must admit, however, that the statutory provisions on this point are obscure and my construction will possibly be questioned. The obscurity is to be found in the Act to Regulate Commerce and our only escape from it is for the legislature to so change our statute as to make the

necessary provisions independent of the Act to Regulate Commerce.

What has been said with reference to concessions to municipalities is true as to allowances to counties.

A close scrutiny of the individual concessions shown on the list will probably reveal other cases where the foregoing rules are applicable. Taking the general rule, that no concession is allowable unless the beneficiary is embraced in the list of exceptions above set forth, the application of the rule to individual cases is mainly a question of fact rather than of legal opinion.

SUPPLEMENTAL OPINION.

Can a Telephone Company Lawfully Grant Free Service to One Orphanage and Only a 50 Per Cent. Reduction to Another?

Such action on the part of a telephone company appears to come within prohibited discriminations. The company is under no obligation to grant free or reduced service to charitable organizations, but having made such concessions to one organization it should not exclude another in like situation.

It has been said by a federal court that the railroads cannot grant concessions to ministers of one denomination and refuse to grant like concessions to those of another. This language was used as a dictum, but the reasoning is good.

See *United States v. Chicago and North-Western Railway Company*, 127 Fed. 785 (790).

RULING.

The purpose of this communication is to advise all companies and individuals owning or operating telephone service within the State of Florida, that they must conform to the law. That hereafter should it come to the notice of the commissioners that any such companies or persons have granted or given any free or reduced service, free pass or frank for the use of any telephone or message telephone to persons who do not come within the limita-

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tions of the statute, that the commissioners will immediately begin proceedings for the punishment of such violations of the law.

The opinion above fully enumerates the persons or classes to whom concessions may be made, and concessions contrary to the exceptions above set forth are contrary to law and must be discontinued.

GEORGIA.

Railroad Commission.

**CITY OF COLUMBUS *et al.* v. SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY.**

File No. 11498.

Decided September 8, 1914.

Complaint as to Proposed Increase in Rates for Exchange Service.

This was a complaint by the city of Columbus as to the reasonableness of certain increased rates which the Southern Bell Telephone and Telegraph Company proposed to put into effect at its exchange in Columbus in accordance with an agreement with the city, submitted to and approved by the Commission on June 10, 1909.

**Factors to be Considered in Determining Reasonableness of Rates are
Value of Service and Value of Property Devoted to Public Service.**

Held: That in order to determine the reasonableness of the rates in question, they must be considered in relation to both (1) the value of the service, and (2) the fair value of the property devoted to the public service.

**Relevant Facts to be Considered in Valuing Property Enumerated by the
Commission.**

Held: That the property to be valued is that actually used and useful in the public service at the time of the inquiry;

That it is not the Commission's idea that a *business* is to be valued;

That among the relevant facts to be considered in estimating the value of the property are: (1) the cost of acquisition and construction, (2) the amounts subsequently expended in permanent additions and improvements, (3) the present, as compared with the original cost of construction, (4) the present depreciated condition of the property, (5) the probable earning capacity of the property, as it stands, under reasonable rates, (6) the sum required to meet operating expenses, keep the property in repair and maintain it in serviceable condition, (7) the relation of the property, as a unit, to the system extending over a wider field of operation than the locality especially served, and the consequent advantages, if any, (8) the adaptability of the property to the purposes for which it was designed.

Valuation of Plant made by Commission on Evidence Furnished by Company without Further Investigation by Commission's Engineers or Accountants.

Because the company exhaustively and with such apparent frankness and fullness gave all the information desired, the Commission considered it unnecessary to make further investigation by its own engineers or accountants.

Without setting forth the detail of the processes by which it arrived at its conclusions, the Commission found that the value of the company's property at Columbus, including a fair *pro rata* of the toll investment located at Columbus and \$15,000 for working capital, was \$450,000.

The following items claimed by the company were excluded by the Commission: (1) The difference between the realized assets of the Columbus Automatic Telephone Company and the price paid for the same, (2) the estimated theoretical cost of assembling expert workmen from different places to construct the Columbus plant, assuming that there was no plant at Columbus and that a complete reproduction new of the actual plant was to be undertaken at once, (3) the estimated theoretical cost of assembling and training an expert operating force to take charge of such a reproduction new, assuming that such a plant was complete with 2,800 connected subscribers, and must begin actual operation immediately under such assumed conditions.

Going Value — Reiteration of Conclusions Expressed in Macon Railway and Light Company Case*—Distinction made between Value of Attached Business and Cost of Attaching Business.

The Commission restated with approval its conclusions in the *Macon Railway and Light Company case** to the effect that "going value" means value due to the fact that a plant is in successful operation having attached to it a developed business; that in a rate case the value of an attached business is to be distinguished from the actual cost of attaching business; and that returns should not be allowed on the former, whereas the latter should be recognized in fixing the ordinary rates of a utility and for a sufficient period to reimburse the utility for reasonable expenditures of this nature.

Going Value — Distinction made between "Exchange Value" and "Fair Value for Rate Making Purposes"—Analogy Drawn between Going Value and Good Will.

The Commission distinguished between "exchange value" or value for sale, and "fair value for rate making purposes," pointing out that in case of a sale a utility transfers its attached business as well as the instrument of service, *i. e.*, the physical property, whereas in rendering service, the utility furnishes only the use of the instrument of service, the at-

* Printed in Commission Leaflet No. 29, at page 1072.—Ed.

tached business being contributed by the consumers. Consequently, exchange value may include both the instrument of service and the attached business, but rates should be based upon the value of the instrument of service only.

As illustrative of this distinction between exchange value and fair value for rate making purposes, the Commission drew an analogy between going value, as related to utilities and good will as attached to mercantile enterprises.

Held: That a public utility is entitled to such compensation for its services as will afford a reasonable return upon the fair value of the instrument of service, but not upon the skill of the users, or upon the favor of the public.

That expenses attaching to the use of the instrument in the service of the public must not be capitalized, but should be included in operating expenses and must be paid by the public.

Earnings and Operating Expenses Investigated—Rate of Depreciation Fixed.

The Commission found that insufficient provision had been made for depreciation in past years, so that the net earnings shown on the books were overstated. It determined that an annual allowance of 5 per cent. for depreciation would be sufficient.

Contract with American Telephone and Telegraph Company Disapproved.

The Commission disapproved the contract under which the American Telephone and Telegraph Company received $4\frac{1}{2}$ per cent. of the gross income of the defendant, holding that although the appliances furnished and the services rendered by the American Telephone and Telegraph Company to its subsidiary companies are valuable, payment therefor should be based on the actual cost thereof.

Contract with Western Electric Company for Purchasing Supplies Criticized.

Held: That the contract between the Southern Bell company and the Western Electric Company is objectionable on the same principles as that between the Southern Bell company and the American Telephone and Telegraph Company, although not so objectionable as to actual results.

Propriety of Contributions to Employees' Pension, Disability Benefit and Insurance Fund Questioned.

The Commission questioned the defendant's right to assume the obligation to maintain an employees' sick benefit disability pension and insurance fund in the absence of a mandatory statute imposing such an obligation as a matter of public policy. It was therefore inclined to disallow

as a proper charge to operating expenses, contributions made to this fund, but left the question open for future discussion. The Commission expressed the opinion that inasmuch as utilities are under obligation to render efficient service at all events, a utility is not justified in placing on the public the burden of maintaining such a fund in order to increase the efficiency of its employees; further, that the establishment of such a fund for the purpose of preventing incapacitated employees from becoming a charge upon the public, amounts to indirect taxation.

Existing Rates Found Reasonable — Rate for Extension Telephones Considered High.

The Commission found that the rates complained of would yield, after a careful revision of operating expenses and with a fair allowance for depreciation, 7 per cent. upon the net valuation of \$450,000; that this return was not unreasonable, and that the service rendered the public at Columbus was worth the net rentals charged.

The Commission expressed the opinion that the state-wide charge of \$1.50 per month for desk or other extension telephones was high, and that the company should take under consideration a reduction of this charge.

Net Rates Prescribed as Maximum Rates.

The schedule in effect stated, as the maximum rates, gross rates from which a discount of 50 cents for prompt payment was allowed. The Commission disapproved this manner of stating the rates and established a schedule showing the existing *net* rates as the maximum rates.*

CANDLER, *Chairman*:

Prior to June, 1909, the Southern Bell Telephone and Telegraph Company and the Columbus Automatic Telephone Company each owned and operated a local telephone exchange in the city of Columbus.

With the consent and approval of the mayor and council of the city of Columbus and of this Commission, the Automatic company sold its property to, and became merged into, the Bell company.

With its assent to, and approval of, the sale to the Bell company the mayor and council agreed with the company that, on and after January 1, 1911, upon the installation of not less than 2,500 local stations connected with the Columbus exchange, the following maximum schedule of rates for local exchange service should go into effect, to wit:

* Editor's headnote.

Unlimited special line business stations.....	\$5 00 per month
Unlimited duplex line business stations.....	4 00 per month
Unlimited special line residence stations.....	3 25 per month
Unlimited duplex line residence stations.....	2 75 per month

This rate agreement was submitted to this Commission, and the rates therein named approved June 10, 1909. On September 30, 1912, the Bell company announced to the public that it then had more than 2,500 stations connected with its local exchange at Columbus, and that, pursuant to the above mentioned agreement and approval, it would, on November 1, 1912, put into effect the following schedule of local exchange service rates, to wit:

Special line business stations.....	\$5 00 per month
Duplex line business stations.....	4 00 per month
Party line business stations.....	4 00 per month
Special line residence stations.....	3 25 per month
Duplex line residence stations.....	2 75 per month
Party line residence stations.....	2 25 per month

The above changes subject to a discount of 50 cents per month, if payment be made in advance on or before the tenth day of the current month.

Whereupon the mayor and council and numerous citizens of Columbus filed with the Commission the pending complaint attacking the reasonableness of the proposed increased rates, and the efficiency of the service rendered by the company.

Because of continuances asked by each side, the final hearing in the case was not had until May 28, last, after which additional time for the filing of briefs was granted.

Upon the hearing, the allegations of complainant as to the inefficiency of the service rendered were abandoned, and the complaint only as to the reasonableness of the increased rates pressed.

In determining the reasonableness of the rates in question, the Commission must do so upon certain adjudicated and generally recognized principles.

In *Smyth v. Ames*, 169 U. S. 546, the Supreme Court of the United States said:

“ We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public.”

In *San Diego Land and Town Company v. National City*, 174 U. S. 739, the same court said:

“ What the company is entitled to demand in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.”

And again in *Willcox v. Consolidated Gas Company*, 212 U. S. 19:

“ There must be a fair return upon the reasonable value of the property at the time it is being used for the public.”

Again in the *Minnesota Rate* cases, 230 U. S. 433:

“ The property of the railroad corporation has been devoted to a public use. There is always the obligation springing from the nature of the business in which it is engaged, which private exigency may not be permitted to ignore—that there shall not be an exorbitant charge for the service rendered. But the State has not seen fit to undertake the service itself; and the private property embarked in it is not placed at the mercy of the legislative caprice. It rests secure under the constitutional protection which extends not merely to the title but to the right to receive just compensation for the services given the public.”

Similar citations can be multiplied.

The practical application of the principles so well settled, that is, the method or methods by which fair or reasonable value is to be ascertained, is the difficult problem.

In *Smyth v. Ames*, already quoted from, the court said:

“ In order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property, under particular rates prescribed by the Statute, and the sum required to meet operating expenses, are all matters for consideration,

and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

The same court later said in the *Minnesota Rate* cases:

"There is no formula for the ascertainment of the fair value of property used for the convenience of the public, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

The Commission therefore understands that in order to determine the reasonableness of the rates in question, they must be considered from two viewpoints, to wit:

First: As related to the value of the service to the public.

Second: As related to the fair value of the property devoted to the public service.

We shall first give consideration to the second proposition. The property to be valued is that actually used and useful in the public service, at the time of this inquiry. This valuation must be, as was stated by Justice Hughes in the *Minnesota* cases, of the "instrument of public service, as property, not of the skill of the users."

It is not our idea that a *business* is to be valued.

Among the relevant facts to be considered in estimating the value of property, are:

1. The cost of acquisition and construction.
2. The amounts subsequently expended in permanent additions and improvements.
3. The present cost of construction as compared with the original.
4. The present condition, that is, the extent of depreciation existing in the property at the time of the valuation.
5. The probable earning capacity of the property, as it stands, under rates reasonable to the public.

6. The sum required to meet operating expenses, keep the property in repair and maintain it in serviceable condition.

7. The relation of the property, as a unit, to a system extending over a wider field of operation than the locality which it especially serves, and consequent advantages, if any.

8. Its adaptability to the purposes for which designed and that it is successfully discharging the functions and purposes of its creation.

We do not mean to say that the above list comprises all of the relevant facts to be taken into consideration in each case, but these and others we have considered in this case.

Fortunately, the company in this case has a complete record, since 1883, of its expenditures in the acquisition and construction of its Columbus plant and of additions to and permanent improvements therein, as also of earnings, operating expenses and other accounting data, and the same have been furnished the Commission.

In addition, two separate audits of the books and accounts of the company have been made and submitted to the Commission by independent accountants, one under employment of the complainant and the other of the respondent. All are in substantial agreement.

The company has also had its Columbus exchange appraised by its general plant accountant, Mr. Jagoe, originally as June 1, 1913, and later brought down to April, 1914, because of the several continuances in the hearing, and the work of enlarging and improving the plant on approved estimates actually in progress during this period, but substantially completed at the date of hearing.

The Commission thinks that it should give expression to its commendation of the detailed thoroughness and the evident fairness with which this appraisal was made, and the unusually full and frank manner in which Mr. Jagoe presented the same to the Commission. This commendation of the manner with which Mr. Jagoe's testimony was given and his apparent desire to be absolutely accurate, fair and helpful to the Commission, is also true, and should be said

of the other expert witnesses of the respondent in charge of its different departments, who testified in the case. So exhaustively and with such apparent frankness and fullness was the necessary information desired by the Commission, as to the properties involved, their original costs, additions to and improvements therein year by year, their reproduction cost, new, present depreciation, earnings, operating expenses, etc., presented to the Commission, that we have not deemed it necessary to make further investigation by our own engineers or accountants.

The Commission does not deem it necessary to set out herein the detailed processes by which it has arrived at its conclusions as to the fair value at this time of the property at Columbus devoted to the public use, upon which the company is entitled to a reasonable return.

After consideration of all relevant facts as we see them, and especially as enumerated above, we are of the opinion that the fair value of the Columbus property, including a fair *pro rata* of the toll investment located, used and useful, in the public service, at this time, and including \$15,000 for working capital, is \$450,000.

It is, perhaps, proper to state that from the valuation placed by us, we have excluded the following items claimed by the company, to wit:

1. Approximately \$22,000 difference between the realized assets of the Automatic company and the purchase price paid for the same.
2. The estimated theoretical cost of assembling expert workmen from different places, to construct the Columbus plant, assuming that there was no plant at Columbus, and that a complete reproduction new of the actual plant was to be undertaken at once.
3. The estimated theoretical cost of assembling and training an expert operation force, to take charge of a reproduction new of the actual plant at Columbus, assuming that such a plant was complete with 2,800 connected subscribers and must begin actual operations immediately under such assumed conditions.

We do not deem it necessary to argue the justice and entire reasonableness of excluding from consideration in this case such items as the last two above. The assumptions necessary to sustain them are too far fetched and violent. The assumed conditions never existed, nor is it possible to suppose that they could exist.

GOING VALUE.

Respondent's attorneys gave much time in oral argument, and much space in their briefs, to urging a review by the Commission of its conclusions as to "going value" as reached and expressed in the *Macon Railway and Light Company* case,* recently passed upon by the Commission.

We have given earnest consideration to their views and the writer has reviewed practically every leading decision on this subject, from the *National Water Works v. Kansas City* case down to date.

In the *Macon Railway and Light Company* case,* we expressed the following views, to wit:

"The applicant further contends that a large sum, to wit: from 25 to 30 per cent. of the total values of the physical properties used in the public service, should be added to the physical property values, as 'going concern value' or 'going value.' The question of 'going value' has been much discussed by courts and commissions, during the past few years. It arises in three distinct classes of cases, to wit: capitalization issues, in rate applications and in sale or purchase transactions. The principles applying in one class have sometimes been applied to the others. In our opinion, there are important distinctions, particularly between capitalization and purchase or sale cases, and rate making cases.

"It is well to have clearly defined just what is meant by 'going value' or 'going concern value.' As we understand the term, it means a value due to the fact that a plant has consumers actually using its product; that it is in actual and successful operation, and has attached to it a developed business. As we understand, the claim in this case is, that to actual physical values there should be added a sum representing the value of this business and the expense incurred in attaching it.

* Printed in Commission Leaflet No. 29, at page 1072.—Ed.

"In a *rate* consideration we distinguish between the value of the attached business, as a property addition, and the actual cash outlay made in attaching the business. The Commission will not allow as added property upon which returns should be perpetually paid by the public, the value of the established business. We do not mean to say that we have in reaching conclusions as to values hereinafter stated, treated certain physical properties as individual, disconnected units. We have considered them as integral and essential parts of a completed, perfected plant, capable of and ready to serve. In these values we have included overhead charges, such as organization, engineering, contractors' profits, reasonable promotion expenses, legal expenses, interest during construction, insurance, etc. In so far as 'going value' includes such elements as actual expense of attaching business, we believe that it should be recognized in the earlier or beginning rates of a public service corporation and for a sufficient period to reimburse the company for such reasonable expenditures. This is done when such expenses are carried, as they should be and are, in operating expenses. But to allow them in 'operating expenses' and at the same time add fixed values to physical property values and tax the public perpetually to afford a return thereon, is contrary to our conviction of right."

We reiterate these conclusions.

Counsel for the company insist that the same value must be attached to a property, for all purposes; and that there is no true distinction between "exchange value" and "fair value for rate making purposes."

By "exchange value" we mean that value which would be placed upon property and intangibles which go with it, when an owner parts with title thereto to another party. In such an exchange the owner really sells more than the property—he sells the *business*, in addition to the *instrument* with which he carries on the business or performs the public service.

— In ascertaining the "fair value" of a given property devoted to the public service, for the purpose of prescribing just and reasonable rates for the use of this property, as the *instrument of such service*; the public cannot, in equity, be taxed to pay returns upon that which it contributes to the business—patronage. The private owner only furnishes the instrument of service, and it only represents his investment. If there be expense attached to its use in the

public service, such "operating expenses" should have consideration under the rates prescribed, as operating expenses.

The owner is not entitled to have such expenses concurrently returned with their incurring out of rates, and at the same time capitalized in part, as added value in investment.

For rate making purposes, we hold that only the property used in the public service must be valued. For this valuation to be fair, relevant facts enhancing its value must be considered. If the property has an "attached business," it is doubtless, as property more valuable than if it was idle. But we insist that it is the property that must be valued, not the attached business.

"Going value" or "going concern value" as related to a public utility may be fairly analogized to "good will" value as attached to a mercantile enterprise. In selling his store and stock of goods, the merchant would properly include in the price representing his idea of value, what he believed to be the value of the attached business or "good will." If, however, he was fixing a selling price on the commodities he was offering his customers, he would not attempt to fix such a price as would pay all operating expenses, provide for losses and depreciation, pay him a reasonable return on the entire capital invested, and, in addition, a return upon the value he attaches to the trade of his customers. The patronage of his friends may be valuable, but he cannot tax them for extending it, notwithstanding the fact that if he is going to part with his property and the business to another party, he may value it in the exchange.

What a public utility is entitled to is such compensation for *its services* as will afford a reasonable return upon the fair value of the instrument of service, as property, not upon the skill of the users, nor upon the favor of the public. The act of rendering the service, the service itself must not be capitalized, though the cost of rendition must be paid by the public.

EARNINGS AND OPERATING EXPENSES.

Having reached the conclusion that the fair value, at this time, of the property of the company at Columbus, upon which it is entitled to earn a reasonable return, including \$15,000 working capital, is \$450,000, we have carefully investigated the earnings of the company during the year 1913 under the rates of which complaint is made, and also earnings of several years prior to 1913, under the old rates.

Since November 1, 1912, the company has expended nearly \$100,000 in permanent additions, extensions and improvements in its plant, so that efficient and satisfactory service is now being rendered.

The company claims and undertook to show that with a proper allowance for depreciation, its net earnings for the year ending December 31, 1913, were \$13,727.08, or 2.56 per cent. on its actual investment.

For ten years ending December 31, 1912, the company claims its net earnings averaged only 3.22 per cent. on its average actual investment. These percentages are arrived at after an annual allowance for depreciation of 7 per cent. on exchange and toll plant, 2 per cent. on real estate and buildings, and 10 per cent. on furniture and fixtures.

According to audit of Chas. Neville and Company, the net earnings for the same period, with the same allowance for depreciation, averaged 3.03 per cent. For six years ending December 31, 1911, the Audit Company of the South report net earnings to have averaged 3.25 per cent. with the same depreciation allowance.

In each of the above results the percentage is figured on the actual investment by the company, including working capital.

The books of the company as kept, however, show net earnings in excess of the above percentages, to wit: about 7.39 per cent. average for the 10 years ending December 31, 1912, according to audit of Neville and Company. During these years, however, the company set aside on its books \$1.00 per station per month to provide for station removals, repairs, maintenance and depreciation. After

charging to this fund actual expenditures for station removals, repairs and maintenance, the company claims, and we believe has shown, that the sum remaining is not sufficient to cover the actual depreciation which has accrued.

DEPRECIATION.

We are satisfied from our study of the record that the actual experience of the past ten years shows that a sufficient sum for depreciation has not been carried on the books of the company, and that consequently the net earnings of the company for the past ten years under the old rates have not been as much as the books show. We are also satisfied that an allowance of 7 per cent. on the exchange and toll plant, in addition to repairs, maintenance and station removals, for depreciation alone, is too high. In our opinion, an allowance of 5 per cent. is sufficient to cover depreciation, especially as the record shows that this company liberally cares for repairs and maintenance.

The correct ascertainment of the earnings of the company largely depends upon the allowance made for depreciation. Its property is peculiarly subject to depreciation, including obsolescence and contingencies, such as are likely to occur at any time and result in impairment of service and in financial loss, as from fires, storms, ice, etc.

There is no public utility which requires a higher degree of efficiency in service than a telephone plant, and to render such service it must always be kept in the best possible physical condition, and up to date in its equipment.

RELATIONS WITH THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY.

Four and a Half Per Cent. Allowance of Gross Earnings.

Included in the operating expenses of the company is an item of $4\frac{1}{2}$ per cent. on gross income paid the American Telephone and Telegraph Company for appliances furnished and services rendered by it to respondent. We disapprove of this percentage charge, and are satisfied that it

should not be allowed in full. The American Telephone and Telegraph Company owns the Southern Bell Telephone and Telegraph Company, as it does all the other Bell companies. Whatever earnings the subsidiary companies make go to the parent company. The appliances furnished and the services rendered by it to its subsidiary companies are valuable, but in our opinion the subsidiary companies should only be charged the actual costs thereof. The American Telephone and Telegraph Company should not make a profit in reality out of itself, at the expense of the public. Under its present practices it takes two bites out of the public apple, when, in good conscience, it is only entitled to one.

The American Telephone and Telegraph Company cannot fairly demand two returns on the same property, or for the same service, which it clearly secures when it charges its subsidiary a profit and it, in turn, charges the public, and turns this over to the parent company in the form of a dividend.

CONTRACT FOR PURCHASING SUPPLIES WITH WESTERN ELECTRIC COMPANY.

We have also considered the effect of the contract between the respondent and the Western Electric Company, another subsidiary of the American Telephone and Telegraph Company, through which the supplies and equipment needed by the Southern Bell Telephone and Telegraph Company are largely purchased. This contract is objectionable on the same principles as that with the American Telephone and Telegraph Company, although we are inclined to think not so objectionable as to actual results.

EMPLOYEES' PENSION, DISABILITY, BENEFIT AND INSURANCE FUND.

We are also inclined to disallow as a proper charge to operating expenses, contributions by the company to the upkeep of an employees' sick benefit, disability, pension and insurance fund.

The desire of the company to make such provision for its employees is laudable and praiseworthy, but, in the absence of a mandatory statute imposing on a public service corporation an obligation or duty to provide such a fund as a matter of public policy, we question its right to voluntarily assume such an obligation and transfer the burden of it to the public under the guise of a charge for service rendered it.

We assume that such a practice is justified upon the grounds:

1. That because thereof more efficient, better satisfied and more interested employees can be secured and consequently the character of service to the public improved;
2. That dependent employees are less liable ultimately to become a charge upon the general public, and that it is more equitable that such a charge should be laid upon that portion of the public in whose service they were incapacitated.

As it appears to us the first argument seems to ignore the fact that the public is entitled to efficient service; that it is the primary duty of the company to furnish such; that charges in the first instance are fixed upon the assumption that such service is being rendered and that the public can be charged no more than the service is worth, however laudable the purpose which might be back of any additional charge.

The second assumption it seems to us is wrong in principle and if followed to its logical conclusion might result in immense burdens of indirect taxation, extending into every field of employment, imposed upon the public without its direct consent, and as to which it would be without voice, control or information.

It is not our purpose here to attempt any well considered discussion of the questions raised in this practice of the company. In the present case, the proportionate amount chargeable to Columbus is not large and its inclusion or exclusion does not materially affect the result.

We shall not, therefore, pass upon the question finally, but will leave it open for future discussion and decision.

CONCLUSIONS.

In our opinion, after careful revision of operating expenses and with a fair allowance for depreciation, all as indicated in the foregoing, this property now is earning nearly 7 per cent. net upon a valuation of \$450,000, including working capital of \$15,000.

In our opinion, this return, under the rates complained of, is not unreasonable. We are further of the opinion that the service now being rendered the public at Columbus exchange is worth the net rentals charged and herein approved.

While we have not thought it proper to include anything on the subject in our order in this case, the Commission is inclined to the opinion that the state-wide charge of \$1.50 per month for desk or other extension 'phones is high, and that the company should take under consideration a reduction in this charge at all of its Georgia exchanges.

We disapprove of the manner of stating the rates in effect by the company, and the order accompanying this opinion will provide that the net rates now charged shall be the maximum rates to be charged.

ORDER.

Upon consideration of the record in the above entitled case, and of the evidence and arguments submitted at the hearings had thereon and of the report and opinion this date adopted by the Commission, containing its findings of facts and conclusions therein with respect to the issues involved, which said report is hereby referred to and made a part hereof,

It is ordered, That, on and after October 1, 1914, and until the further order of this Commission, the following schedules of rates shall be the maximum schedules of rates for local exchange telephone service, to be charged by the

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Southern Bell Telephone and Telegraph Company, in the city of Columbus, Georgia:

Unlimited special line business station.....	\$4 50 per month
Unlimited duplex line business station.....	3 50 per month
Unlimited party line business station.....	3 50 per month
Unlimited special line residence station.....	2 75 per month
Unlimited duplex line residence station.....	2 25 per month
Unlimited party line residence station.....	1 75 per month

In re COMPLAINT AS TO TELEPHONE RATES AND SERVICE AT
COLUMBUS, GEORGIA.

File No. 11498.

Decided September 8, 1914.

Discontinuance of Filing of Monthly Reports Authorized.

ORDER.

WHEREAS, under order* of the Commission, in the foregoing complaint dated November 8, 1912, the Southern Bell Telephone and Telegraph Company was required to file with the Commission a monthly statement showing the name of each subscriber at Columbus, and the amount collected by said company of each subscriber, under the rates prescribed in said order in excess of the rates in effect prior to November 1, 1912, and

WHEREAS, the Commission in an opinion† this day adopted has found that the rates approved in said order were not unreasonable, and in a separate order† of even date herewith has authorized their continuance in the future, except, however, that on and after October 1, 1914, the net rates in effect shall be stated as the maximum rates,

It is now ordered, That the said company be, and is hereby, authorized to discontinue the filing of the monthly reports aforesaid.

* III Commission Telephone Cases, 380.—Ed.

† *Supra*.

ILLINOIS.

State Public Utilities Commission.

REGULATIONS TO GOVERN THE DESTRUCTION OF RECORDS OF TELEPHONE, TELEGRAPH AND CABLE COMPANIES (INCLUDING WIRELESS COMPANIES).

First Issue.

Approved July 2, 1914 — Effective July 1, 1914.

ORDER.

At a regular meeting of the State Public Utilities Commission of Illinois, held at its office in Springfield, Illinois, on the second day of July, 1914, the matter of the determination of the operating, accounting and financial papers, records, books, blanks, tickets, stubs and documents of telephone, telegraph and cable companies which may, after a reasonable time, be destroyed, being under consideration, the following order was entered:

It is ordered, That the Regulations to Govern the Destruction of Records of Telephone, Telegraph and Cable Companies, First Issue, effective on July 1, 1914, a copy of which is now before this Commission, be, and they hereby are, approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, be filed in the office of the chief accountant and statistician; and that each of said copies so authenticated and filed shall be deemed an original record thereof.*

* The regulations prescribed by the Commission are identical with those prescribed by the Interstate Commerce Commission, effective February 1, 1914, and printed in Commission Leaflet No. 27, at page 228, except that where the word "carrier" appears in the regulations prescribed by the Interstate Commerce Commission, the word "company" appears in the regulations prescribed by the Illinois Commission.—Ed.

It is further ordered, That the said regulations be, and they hereby are, prescribed for the use of telephone, telegraph, and cable companies (including wireless companies), subject to the provisions of the *Act to provide for the regulation of public utilities*, approved June 30, 1913, in the destruction of their accounts, records, and memoranda; and that a copy of the said regulations be sent to each and every such telephone, telegraph and cable company as above and to each and every receiver or operating trustee of any such telephone, telegraph and cable company as above.

It is further ordered, That each and every telephone, telegraph and cable company as above and each and every receiver or operating trustee of any such telephone, telegraph and cable company as above, be, and hereby is, permitted to destroy the accounts, records, and memoranda named or described in the said regulations, after preserving the same for the period of time respectively specified and upon complying with the requirements of the regulations.

It is further ordered, That all accounts, records, and memoranda of such telephone, telegraph and cable companies, other than those the destruction of which is permitted in the said regulations, shall remain under the prohibition of destruction.

It is further ordered, That the said *Regulations to Govern the Destruction of Records of Telephone, Telegraph, and Cable Companies, First Issue*, shall become effective on July 1, 1914.

COMMERCIAL TELEPHONE AND TELEGRAPH COMPANY v. EDWARDS COUNTY INDEPENDENT TELEPHONE ASSOCIATION.

No. 2141.

Decided July 24, 1914.

Certificate of Public Convenience and Necessity — Installation of Switchboard.

Held: That where a telephone company operating in a village has abandoned its switchboard and connected its lines with the switchboard

of another company but has continued to maintain and operate its telephones within the village, no certificate of public convenience and necessity is necessary if the company later desires to install a switchboard of its own and to connect its lines therewith, as the installation of such switchboard is merely an extension to the company's existing plant, not the beginning of new construction.*

OPINION AND ORDER.

In the petition in this case the Commercial Telephone and Telegraph Company recites that the respondent, Edwards County Independent Telephone Association, under an ordinance passed by the city council of the city of Albion on the twenty-first day of January, 1914, is seeking and proceeding to install in the city of Albion a telephone system to do a general telephone business with its own telephone exchange, although the petitioner was already operating a telephone exchange in that city, as the successor of the Albion Telephone Company under an ordinance granted to that company on the fourth day of January, 1909.

This Commission is appealed to by this petitioner to grant the following relief:

First: A permanent order restraining the city of Albion from in any manner interfering with the vested rights of the petitioner and from in any manner hindering, delaying or preventing the petitioner from performing the duties and rendering the service that it is required to perform by law.

Second: That all the defendants named, to wit: the city of Albion and the Edwards County Independent Telephone Association and Frank Coles, secretary of said Edwards County Independent Telephone Association, and John Anderson, mayor of the city of Albion, and B. E. Harris, clerk of the city of Albion, be permanently restrained from maintaining and operating a telephone exchange in the city of Albion or rendering any telephone service of any kind or character which in any manner would interfere with the rights and privileges of the petitioner, "and that such

* Editor's headnote.

other order may be entered as to the Commission may seem meet."

The Edwards County Independent Telephone Association filed a motion to dismiss the petition for the following reasons:

First: That the petition does not allege any violation of law or any rule or regulation of this Commission.

Second: That the respondent company is not a public utility.

The respondent, the Edwards County Independent Telephone Association, and the city of Albion also answered the petition and denied substantially all the averments thereof, and denied the right of the petitioner for the relief prayed for.

The hearing was held at the office of the Commission at Springfield, Illinois, on February 18, 1914. *John Lynch*, attorney, appeared for the petitioner and *E. B. Green* and *S. E. Quindry*, attorneys, appeared for the respondent.

The Commission reserved its decision of the questions presented by the above motion until the final decision of the case.

In this case it is contended that "the respondent company is a mutual association, which does not operate for profit or pecuniary gain and is not a public utility under the law and this Commission has no jurisdiction to regulate its affairs."

However, inasmuch as the relief prayed for by the petitioner cannot be granted for the reasons hereinafter set forth, it is not necessary to, and the Commission does not, decide the question as to whether the respondent is or is not a public utility.

It is also contended that the respondent company is not seeking to install a new telephone plant in the city of Albion. The testimony shows that some years ago the respondent association, under a license or franchise granted by the village (now city) of Albion, extended its telephone system into the village and built a telephone

exchange in Albion, said association also installed and operated about twenty telephones in residences and places of business in said village. Later on, under an arrangement for switching its lines, made with Albion Telephone Company (predecessor of petitioner), the respondent association abandoned its own switchboard in the village and connected its lines and wires with the switchboard of the Albion company. The respondent association, however, continued to maintain and operate the above mentioned telephones within the village, and the testimony shows that on January 1, 1914, it had about twenty telephones in operation in the city of Albion. It is now proposing to install an exchange of its own in the city and to connect its lines therewith.

Therefore the real question presented in this case is as to whether under the above state of facts, the respondent association is entitled to reinstall an exchange and to continue to operate its telephone business in the city of Albion without first securing a certificate of public convenience and necessity. Section 55 of the act governing this Commission provides, in part, as follows:

"No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or in extension thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction."

It is the conclusion of the Commission that the testimony in this case does not show that the respondent association is proposing to construct a new telephone plant within the meaning of Section 55 above mentioned, but on the contrary said association is merely seeking to make extensions and additions to and substitution of its already existing plant in the city of Albion.

The Commission having heard the testimony and being fully advised in the premises finds:

First: That the rates and charges of the petitioner that were in effect on July 1, 1913, were, on or about January 1,

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1914, increased without the approval of this Commission, but in compliance with the Conference Ruling No. 7 of this Commission, the rates of July 1, 1913, were restored.

Second: That the acts done and the work contemplated by said respondent association as shown by the evidence in this case, do not constitute "the beginning of or construction of any new plant, equipment, property or facility," within the meaning of Section 55, but, on the contrary, merely amount to the addition or extension to and the substitution of its already existing plant in the city of Albion.

It is, therefore, ordered, That the petition be, and the same is hereby, dismissed.

By order of the Commission this twenty-fourth day of July, 1914.

Dated at Springfield, Illinois.

ROCK RIVER TELEPHONE COMPANY v. FORRESTON MUTUAL
TELEPHONE COMPANY.

No. 2157.

Decided July 24, 1914.

**Certificate of Public Convenience and Necessity Not Required Although
Duplication of Facilities Results from the Extension
of an Existing Plant.**

Held: That although the Forreton company had built lines along highways in the territory previously developed by the Rock River company, nevertheless as the building of these lines was an extension of the existing plant of the Forreton company, it was not unlawful for that company to construct said lines without obtaining a certificate of public convenience and necessity from the Commission.

Elimination of Discrimination between Stockholders and Non-stockholders.

Ordered: That the Forreton Mutual Telephone Company discontinue the practice of charging a lower rate to stockholders than to non-stockholders for the same service.*

* Editor's headnote.

OPINION AND ORDER.

Complaint filed with the Commission by the Rock River Telephone Company of Rochelle, Illinois, February 9, 1914, sets forth that the Forreston Mutual Telephone Company of Forreston, Illinois, is inducing the patrons of the Rock River company to discontinue the use of the telephones of said company by offering to such patrons a more limited service at a lower rate, which rate is not sufficient to pay a fair profit to the utility furnishing the service.

The complainant further sets forth that the officers, directors and stockholders of the Forreston Mutual Telephone Company are inexperienced as to the cost of permanent telephone service, and that by reason of competition and rivalry between the several telephone companies operating throughout Ogle County, the telephone business is on a ruinous competitive basis and the service necessarily of a poor quality.

The petitioner prays that the Commission readjust the rates of all telephone companies in Ogle County and establish rates on an equitable basis, and further prays that the Commission order the Forreston Mutual Telephone Company to discontinue building new lines paralleling lines of the Rock River company and to discontinue serving former subscribers of the Rock River company who have been induced to discontinue the service of the Rock River company since July 1, 1913, and more particularly since January 1, 1914. The petitioner further prays that the Commission fix a rate for local service in the village of Forreston for both companies; that a schedule of toll rates be established for all service beyond the Forreston exchange area, and that the Commission order such remedies to existing conditions as it may consider meet and proper.

In answering the complaint of the Rock River Telephone Company, the Forreston Mutual Telephone Company denies that it has induced patrons of the Rock River company to discontinue the use of the telephones of said company by offering a more limited service at a lower rate, and further denies that it has built several miles of poorly

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constructed lines in order to quickly induce the subscribers of the Rock River company to desert said company.

The respondent admits that since the first of July, 1913, some of the patrons of the Rock River company have discontinued the service of that company and subscribed to the service of the Forreton Mutual company, but that a majority of such patrons have not been provided with the service of the Forreton Mutual company since January 1, 1914, as alleged in the complaint. Respondent asks that the complaint be dismissed.

Hearing was held at Chicago on February 24, 1914. Both parties were ordered to restore rates that were in effect on July 1, 1913, and file an amended petition, and by agreement the case was continued until March 24, 1914. Hearing was again had at Chicago on March 24, 1914. Petitioner was represented by *W. P. Landon*. Respondent company was not represented. From the testimony of the witnesses for the petition it appears that the respondent, the Forreton Mutual Telephone Company, has built lines along the highways in the vicinity of Forreton since January 1, 1914, and solicited subscribers to their service at the rate of \$6.00 per annum for stockholders and \$12.00 per annum for non-stockholders.

The respondent company was not represented, but the answer filed constitutes a sufficient appearance and furthermore the representatives of the respondent company assured the Commission on February 24, that they would be represented at the hearing on March 24, therefore it was considered fair to assume that the respondent desired to interpose no defense other than their formal answer. At the conclusion of the hearing the case was taken under advisement.

In order that the Commission might have some knowledge of the conditions set forth in the complaint, a representative of the Commission visited Forreton on April 18 and made an investigation of conditions and an examination of the physical properties of both the Rock River Telephone Company and the Forreton Mutual Telephone Company.

It appears that the Rock River Telephone Company, with headquarters at Rochelle, and operating exchanges at Rochelle, Oregon, Mt. Morris and Forreston, prior to July 1, 1913, increased their rate for farmer line service at Forreston from \$12.00 per annum to \$18.00 per annum. They had at that time about 200 farmer subscribers connected with their exchange at Forreston.

The increase in rates was met with vigorous protest on the part of these farmer subscribers, and about 100 telephones were ordered discontinued.

No effort was made to enforce payment at the new rate until after July 1, 1913, and realizing that this increase in rates was probably resulting in the loss of fully 50 per cent. of their farmer subscribers, the Rock River company reduced the rate from \$18.00 per annum to \$15.00 and proceeded to make the collections at that rate. Many of the subscribers who had ordered their service discontinued when the rate of \$18.00 per annum was announced, decided to keep the service at the rate of \$15.00 per annum, but some 65 subscribers insisted on their service being discontinued and accordingly the telephones were removed by the Rock River company.

The Forreston Mutual Telephone Company, with headquarters at Forreston, also operated an exchange in the town of Forreston and those parties who discontinued the service of the Rock River company applied to the Forreston Mutual company for service. In order to furnish such service it was necessary for the Forreston Mutual company to provide facilities in the way of pole lines and circuits, and during the period from September 1, 1913, to March 1, 1914, the Forreston Mutual company proceeded to build lines through territory in the vicinity of Forreston, that previously had been developed by the Rock River Telephone Company.

The number of stations of both companies is set forth in the following table:

Classification	Rock River	Forreston
	Telephone Company	Mutual Telephone Company
Business telephones	39	47
Residence telephones	98	37
Rural telephones	134	361
	<hr/>	<hr/>
TOTAL	271	445

Since the hearing in this case held at Chicago on March 24, 1914, the Forreston Mutual company has made no further extensions and additions to its plant.

By reason of the Forreston Mutual Telephone Company furnishing service at a less rate than the Rock River company it will be possible for it to secure many of the subscribers of the Rock River company, and insomuch as the local exchange development of the Rock River company at Forreston is largely dependent on its farmer line development, the loss of this farmer line business will result in the loss of considerable revenue to the Rock River company.

That part of the petition of the Rock River Telephone Company praying for a readjustment of the rates of all telephone companies in Ogle County and the establishment of fair and equitable rates for both companies in the village of Forreston and a schedule of toll rates for service beyond the Forreston exchange area is dismissed, for the reason that such action on the part of the Commission would affect the rights of telephone companies that have not been made parties to and have not appeared in this case.

It follows, therefore, that the question to be determined in this case is whether the respondent company, the Forreston Mutual Telephone Company, is extending and operating its lines in violation of the provisions of "*An act to provide for the regulation of public utilities*;" also whether said respondent company has now in force and effect discriminatory rates and charges.

Section 55, Article 4, of the act reads:

"No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facilities or in extension thereof or in addi-

tion thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction.

"No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State at the time this act goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

"Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto it shall have the power to issue certificates of public convenience and necessity.

"Such certificates may be altered or modified by the Commission on its own motion or upon application by the person or corporation affected. Unless exercised within a period of two years from the grant thereof authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void."

The new plant, equipment, property or facility for which the utility must get a certificate of public convenience and necessity to construct, operate and maintain, is only the new plant, etc., which is not in substitution of any existing plant, property or facility, or in extension thereof or in addition thereto. If it is in substitution of any existing plant, equipment or facility, or in extension thereof or in addition thereto, then a certificate of public convenience and necessity is not required.

It appears that the construction of additional lines in the vicinity of the village of Forreston, which lines are connected with and form an integral part of the system of the respondent is in extension of, or in addition to, the existing plant, and

The Commission finds, That the construction of telephone lines over the roads and highways in the vicinity of the village of Forreston by the Forreston Mutual Telephone Company, for the purpose of furnishing telephone service to the public is in extension of and in addition to the existing plant and equipment of said company, and not the construction of a new plant, and that, under the facts and circumstances in this case, it was not unlawful for the respondent to construct the new lines above mentioned

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without securing a certificate of public convenience and necessity.

The Commission further finds, That the rates and charges of the Forrester Mutual Telephone Company now in force and effect are discriminatory, and that subscribers who are stockholders are charged a less rate than subscribers who are not stockholders, and,

It is, therefore, ordered, That such discriminatory rates and charges be discontinued and the regular schedule rates be charged all subscribers without discrimination from and after July 31, 1914; also that the above change in rates and charges be published as provided by Section 34 of "*An Act to provide for the regulation of public utilities.*"

By order of the Commission this twenty-fourth day of July, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE BYRON TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2378.

Decided July 24, 1914.

Increase in Rates for Rural Service Denied—Free Service between Exchanges Discontinued—Schedule of Toll Rates Established.

OPINION AND ORDER.

Application in the above entitled matter was filed with the Commission April 1, 1914, and sets forth that the petitioner is a corporation organized and doing business under the laws of the State of Illinois, with its principal place of business at Byron, Ogle County, Illinois, and is a public utility engaged in the management and operation of telephone systems in the city of Byron and in the village of Stillman Valley; also a system of connecting toll lines between these exchanges and neighboring exchanges.

As set forth in the application, the lawful rates now in force and effect are as follows:

<i>Classification</i>	<i>Rates</i>
Individual line business telephones.....	\$2 00 per month
Individual line residence telephones.....	1 50 per month
Party line residence telephones.....	1 00 per month
Rural telephones (the rate is \$1.00 per month if paid three months in advance)	1 50 per month

Free service is furnished subscribers to all points in Ogle County, excepting Flag Center and Polo.

Application sets forth that under the present schedule of rates it is impossible to maintain the plant, furnish good service and pay a reasonable dividend on the money invested after allowing a proper amount for depreciation and renewals.

Application is made for authority to change the rate for rural service from \$1.50 per month to \$1.75 per month, the rate of \$1.50 per month to continue to apply where payments are made for service three months in advance; and also to establish a schedule of toll rates to points in Ogle and Winnebago Counties as shown by the following tables:

Proposed Schedule of Toll Rates from Byron and Stillman Valley to Points in Ogle County.

To Mt. Morris	5 cents	To Kings.	5 cents
To Adeline.	5 cents	To Oregon.	5 cents
To Forreston.	5 cents	To Chana.	5 cents
To Lindenwood.	5 cents	To Leaf River	5 cents
To Holcomb.	5 cents	To Polo.	10 cents
To Monroe.	5 cents	To Rochelle.	10 cents
To Flag Center	5 cents	To Creston.	10 cents

Proposed Schedule of Toll Rates from Byron and Stillman Valley to Points in Winnebago County.

To Rockford.	10 cents	To Seward.	10 cents
To Winnebago.	15 cents		

Hearing was had at Chicago on May 12, 1914. *R. K. Welch* appeared for the petitioner. *L. D. Marshall* appeared representing the subscribers in the village of Byron and *F. R. Kendall* appeared representing the rural subscribers. The testimony and discussion related largely to

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the character and condition of the petitioner's plant and quality of the service furnished.

The company was organized in 1902 as a stock company with a capitalization of \$10,000.

The territory supplied with telephone service by the Byron Telephone Company comprises the townships of Byron, Marion, Scott and a part of White Rock and Rockvale, Ogle County, Illinois. On January 1, 1913, there were approximately 783 telephones in service, 532 connected with the Byron exchange and 251 connected with the Stillman Valley exchange. The lines supplying service to these are all of metallic construction, including the local lines within the village limits of each exchange. In addition to the exchange properties, the utility has 63 miles of toll pole line and 219 miles of toll wire, 55 miles of which is No. 10 copper wire. The toll line system is operating in connection with the Bell system, a number of independent toll line systems.

The utility has paid a dividend of from six to ten per cent. on its capital stock of \$10,000 for several years, and on January 1, 1913, had a surplus of \$17,000. It developed that the utility has never set aside any part of its earnings for depreciation and that the manager of the company who owns \$5,600 of the capital stock and therefore receives a certain sum in dividends, practically donates his services as manager, receiving \$300 or less per year, and it was contended that had the manager been paid a salary in keeping with the work performed by him, the entire surplus would have been wiped out.

The utility has no standard system of accounting and the statement of earnings and expenses submitted at the hearing was of very little value in determining the reasonableness of the proposed change in rates.

The petitioner contended that by reason of the so-called free toll service, the utility is performing a large amount of work for which it receives no revenue; that by reason of this free service a great many unnecessary calls are han-

dled, and that a greater part of such calls are confined to a comparatively small number of subscribers.

In substantiation of this, the manager presented evidence to the effect that out of the total of 362 calls originated at the Stillman Valley exchange in one month, 331 of these calls originated at rural stations and 31 at town stations.

In the month of January, 1913, 1,692 calls were handled over toll lines for which the utility received no revenue whatever, and in the month of March, when it became generally known that no charge would be made for such service until this Commission determined this case, 3,140 calls were handled free over toll lines.

The proposed change in rate for rural service was vigorously opposed, and at the close of the testimony Mr. Welch, representing the petitioner, stated that if the objectors were sincere in their opposition to the proposed increase in the rural rate, the petitioner would withdraw the application for authority to change the rates for rural service from \$1.50 per month to \$1.75 per month provided the objectors would withdraw their opposition to the proposed schedule of toll rates. This proposition was not discussed at any length.

Free service over toll lines is the natural outgrowth of the telephone business and in many instances has been extended to subscribers voluntarily by the telephone companies but more often such service has been furnished in response to a demand on the part of the telephone users for extensive free service. The subscriber first has received unlimited service to all other subscribers connected with the exchange with which he is connected, then the necessity for connection with neighboring exchanges has developed, and free service has been demanded with such neighborhood exchange. Connections have been made with neighboring exchanges under the same conditions until a network of inter-connecting lines has been established over which free service is furnished.

These connecting lines must be maintained, and in the end replaced, and in order to do this the utility, theoreti-

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cally at least, must derive enough return from the system as a whole to take care of the upkeep of the toll lines, but in actual practice, this does not work out as is clearly shown in the case of Byron Telephone Company.

The rates for exchange service are seldom fixed at a level that will produce sufficient revenue to meet all factors of expenses, including maintenance and depreciation charges on a toll line plant, and pay a reasonable return on the investment in such plant. As a result the condition of the toll line plant of the average telephone company furnishing free service over such toll lines is poor and the service is necessarily of an inferior quality. Traffic studies show that where free service is furnished over toll lines, certain individuals in each exchange use the inter-connecting lines much more than others, while some subscribers do not use the lines at all. It would seem therefore that the subscribers who use the lines should pay toward their upkeep, and that it is unfair to charge any part of the cost of such upkeep to those subscribers who do not use the lines. Free service trunk lines between exchanges are frequently congested by messages to such an extent that important messages for which the patron would willingly pay a reasonable charge are held up, and the service is rendered less adequate and less efficient.

These conditions are especially applicable to the system of the Byron Telephone Company. As has been stated the applicant operates two exchanges which are connected by trunk lines and also has direct connections over local trunk lines, with Mt. Morris, Adeline, Forreston, Lindenwood, Holcomb, Flag Center, Kings, Oregon, Chana, Leaf River, Polo, Rochelle and Creston in Ogle County and Rockford, Winnebago and Seward in Winnebago County. Service is free between these exchanges and from the evidence presented it appears that the traffic over these lines is congested.

There seems to be no valid reason for requiring every subscriber on the system to help maintain a part of the plant and equipment which he may not use at all. It is

also evident that some means should be effected to reduce the congestion upon many of the toll lines, and

It is, therefore, ordered, That the petitioner, the Byron Telephone Company, establish a schedule of toll rates for Byron and Stillman Valley as follows:

To Mt. Morris	5 cents	To Chana.	5 cents
To Adeline.	5 cents	To Leaf River	5 cents
To Forreston.	5 cents	To Polo.	10 cents
To Lindenwood.	5 cents	To Rochelle.	10 cents
To Holcomb.	5 cents	To Creston.	10 cents
To Monroe.	5 cents	To Rockford.	10 cents
To Flag Center	5 cents	To Winnebago.	15 cents
To Kings.	5 cents	To Seward.	10 cents
To Oregon.	5 cents		

Such schedule of rates shall be approved and published as provided by Section 34 of "*An Act to provide for the regulation of public utilities.*"

Application for authority to change the rate for rural service from \$1.50 per month to \$1.75 per month is denied.

By order of the Commission this twenty-fourth day of July, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE MONTGOMERY COUNTY TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2399.

Decided July 24, 1914.

Rates for Metallic Circuit Service Fixed, upon the Establishment of Metallic in Addition to Grounded Line Service—Continuation in Force of Former Rates for Grounded Line Service.

OPINION AND ORDER.

Application in the above entitled matter sets forth that the petitioner is a public utility engaged in the manage-

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ment and operation of a general telephone system in Montgomery County, Illinois, consisting of local exchanges and connecting toll lines. Exchanges are located at Butler, Donnellson, Hillsboro, Nokomis, Raymond, Schram City and Taylor Springs.

Application further sets forth that the utility furnishes service to rural subscribers at all of its exchanges; that the lines serving such rural subscribers are grounded lines with the exception of two metallic lines connected with the Hillsboro exchange; that by reason of the construction of high tension power lines throughout the territory traversed by these rural lines, and leakage and induction from such power lines, the rural lines are very noisy and the service is entirely unsatisfactory to the subscribers, and that in order to furnish adequate and efficient service to such subscribers, it will be necessary to provide metallic circuits.

Application is made for authority to change the rate from \$15.00 per year for rural service on grounded lines to \$18.00 per year for rural service on metallic lines. The only subscribers affected by the proposed change in rate are the rural subscribers. On July 1, 1914, there were 590 such subscribers connected.

Hearing was held at Springfield, Illinois, on July 1, 1914. *A. M. Howell*, secretary of the company, and *Ben B. Boynton*, attorney, appeared for the petitioner; no one appeared objecting.

The company reports the total present valuation of the plant at \$59,850.60. This embraces the local exchanges, rural lines and toll lines. Income available for dividends for the twelve months ending June 30, 1914, is reported to be \$2,977.80, or approximately 5 per cent. on the present valuation of this plant.

The petitioner submitted a statement of the estimated cost of reconstructing its rural lines and the replacements of all grounded circuits with metallic circuits.

According to this statement \$23,060.36 will be required for this work. If all of the 590 rural subscribers should

elect to take metallic service, the possible increase in revenue would amount to \$3,540 per annum. If the cost of operation and maintenance is not increased this increase in revenue will yield a rate of return equal to 15.3 per cent. on the added investment of \$23,060.36.

It is so highly probable as to be almost a certainty that not all of the 590 rural subscribers will desire the metallic line service and that the cost of operation and maintenance of the metallic lines will be greater than the cost and operation of the grounded lines. This decrease in estimated revenue and increase in operation and maintenance costs will reduce the rate of returns and it is more probable that the rate of return will amount to 14 per cent. instead of the estimated 15.3 per cent.

The statements submitted at the hearing have been checked by the engineers for the Commission and it appears that the amount of investment per station is substantially equal to that of such other exchanges of the same class for which figures are available. No inventory valuation of the property of the petitioner has been made and it is not possible to state absolutely the extent to which the company's construction account would correspond with such a valuation. Under the circumstances it appears that such a valuation is unnecessary for the reason that the amount of the investment reported and the estimated cost of reconstructing the rural lines appear in all respects to be reasonable for business of this character.

As set forth in the testimony the lines of the Montgomery County Telephone Company are in some instances paralleled, and in other instances intersected, by high tension power lines and the leakage and induction from such high tension lines have seriously affected the service furnished by the petitioner. Not only are the rural lines affected but it appears that the disturbances extend over the entire system and some of the local exchange lines are affected. It has long been recognized by telephone engineers that the grounded system is unsatisfactory since causes of disturb-

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ances on grounded lines cannot be eliminated. Such causes of disturbances are, (1) Leakage. (2) Electro-Magnetic Induction. (3) Electro-Static Induction; and by reason of paralleling grounded circuits and paralleling high tension power circuits, the rural lines of the Montgomery County Telephone Company are affected by all of the above causes.

That the present service is unsatisfactory to the subscribers there can be no doubt, and that the utility is entitled to a rate for metallic line service that will produce a reasonable return on the added investment necessary to provide such service, is recognized. The utility is asking not so much for an increase in rate as for a higher rate for a better service. The utility proposes to offer something which it has not heretofore offered to its subscribers and for this improved service it is entitled to fair remuneration.

It is, therefore, ordered, That the petitioner, the Montgomery County Telephone Company, may charge a rate of \$1.50 per month for metallic line rural service. The rate of \$1.25 per month for grounded line rural service is to continue to apply to all subscribers who desire such service.

It is further ordered, That the rate of \$1.50 per month for metallic line rural service shall become effective August 1, 1914, and that the petitioner shall post and publish the new rate as provided by Section 34 of "*An Act to provide for the regulation of public utilities.*"

By order of the Commission this twenty-fourth day of July, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF RATES, RULES AND CLASSIFICATIONS OF
TELEPHONE SERVICE IN ILLINOIS.

Conference Ruling No. 13.

Dated July 30, 1914.

**Free and Reduced Rate Service—Telephones in Railroad Stations—
Classification into Business and Residence Subscribers—Free Toll
Service to Subscribers—Regular Schedule to Supersede
Special Rates—Discounts for Prompt Payment—Charge
for Special Installation Only—Rates for Temporary
Service—Charges for Removing Telephones.**

CONFERENCE RULING.

a. All free and reduced rate service is prohibited by the act providing for the regulation of public utilities. Section 39, Article 4, of that act reads as follows:

“No public utility, or any officer or agent thereof, or any person acting for or employed by it, shall directly or indirectly, by any device or means whatsoever, suffer or permit any corporation or person to obtain any service, commodity, or product at less than the rate or other charge then established and in force as shown by the schedules filed and in effect at the time. No person or corporation shall, directly or indirectly, by any device or means whatsoever, whether with or without the consent or connivance of a public utility or any of its officers, agents, or employees, seek to obtain or obtain any service, commodity, or product at less than the rate or other charge then established and in force therefor.”

It follows, of course, that all free and reduced rate service now given to public offices and officers in the various municipalities is prohibited by the above, but it will not be the general policy of the Commission, on its own initiative, to inquire into the reasonableness of the terms and conditions of ordinances providing for compensation to municipalities in the way of telephone service, where the terms have been agreed upon between the municipalities of the State and the public utilities, prior to the taking effect of the act creating this Commission.

b. The law prohibits free local service from public pay stations; it also prohibits free toll service for a part only of the subscribers of the telephone company and not for

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all of the subscribers, similarly situated. It does not, however, prohibit telephone companies from furnishing free service to such of its employees as it must reach in order to provide adequate and efficient service to the public.

c. Where telephone service in railway stations may be reasonably required under the provisions of Section 49 of the State Public Utilities Law, railway companies should pay the regular business rate for such service. In railway stations at which the railway company cannot reasonably be expected to pay for a telephone, or where it already pays for one or more telephones, telephone companies may be permitted, if they so desire, to place a pay station telephone equipped with a coin collector. Under these conditions all subscribers of the telephone company in question, can have communication with the railway station without additional charge, but messages sent from the station to a subscriber must be paid for.

At large railway stations where the convenience of the public requires it, and the volume of the business warrants it, telephone companies may be permitted to install public pay stations.

d. The classification of telephone subscribers into business and residence subscribers with higher rates for the former than for the latter is reasonable and permissible (1) because of the greater cost of providing business service and (2) because it is a well established principle that a lower residence rate is necessary in order that a sufficiently large number of subscribers may be secured to make the telephone valuable to all users. An extension of this classification may be made so as to apply to churches, hospitals and other charitable institutions, provided that the two principles of cost and service to other subscribers are continually kept in view and provided further that such classification shall not apply to any institution supported by public taxation.

e. Where the place of business and the residence of a subscriber are in the same premises, and no telephone is in-

stalled in the place of business, the business rate should be charged for the telephone installed in the residence.

f. Every telephone company which offers business and residence rates should publish a separate and distinct rate for business telephones and for residence telephones, and a so-called combined rate for a business telephone and a residence telephone, which is less than the sum of the regularly published residence and business rates is unlawful.

g. It is lawful for telephone companies to furnish free toll service to their respective subscribers provided the same is given to all subscribers alike. In such cases the free toll service may be regarded as a part of the service which each company is providing for its subscribers.

h. Where special rates have been in effect under individual contracts, said rates shall be changed to conform to the regular schedule rates. Where one class of service is superseded by another class of service, it is lawful to collect that rate which the regular schedule provides for the class of service furnished.

i. It is lawful for telephone companies to offer discounts from the regular charge, on conditions of payment of the bill on or before a certain date, provided that such discount rules are strictly complied with, without discrimination.

j. In cases where the company provides special wiring or special apparatus to meet special conditions, it is lawful to collect a special installation charge to cover the additional expense incurred. An addition to the regular charge for the service shall not be imposed on account of special wiring or special apparatus which is properly chargeable only to the regular installation.

k. Telephones installed or used for short periods of time, such as telephones in temporary business places, summer cottages, political headquarters, etc., may justly be charged a higher rate than the proportionate charge of the regular annual rate for the respective class of service under the regular schedule.

l. A charge may be made for removing telephones from

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one address to another after the first installation and prior to the expiration of the term of the subscription or contract for service, provided that the amount of this charge shall be as nearly as possible the actual cost of performing the work.

It is, therefore, ordered, That all telephone companies doing business in the State of Illinois change their rates, rules and classifications not at present in harmony with this ruling, to conform with the same. Two months will be considered an adequate period of time within which to comply with the provisions of this order.

By order of the Commission this thirtieth day of July, 1914, dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE PITCHER TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2203.

Decided July 31, 1914.

Inadequate Revenue—Increase in Rates—Valuation of Property—Determination of Revenues and Expenses—Installation of Party Line Service—Lower Rates for Party Line than for Individual Service—Schedule of Rates Prescribed.

OPINION AND ORDER.

The application in the above entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of the general telephone system consisting of local exchanges and connecting toll lines covering the greater part of Jo Daviess County, at Warren, Illinois. Exchanges are operated at Warren, Galena, East Dubuque, Apple River, Scales Mound, Hanover, Elizabeth, Woodbine and Stockton. The lawful rates of the applicant now in effect at all exchanges are as follows:

Business telephones, independent line.....	\$2 00 per month
Residence telephones, independent line.....	1 00 per month
Residence telephones, independent line (including county service)	1 50 per month
Rural telephones, party line.....	1 20 per month
Switching farmer lines owned by subscribers.....	50 per month

A connecting rate of \$3.00 per month is charged subscribers who have both a business and a residence telephone.

The application sets forth that the revenue received from the present schedule of rates is not sufficient to cover all of the factors of expense, provide for depreciation and pay a reasonable return on the investment. Application is made for authority to put into effect the following schedule of rates:

Business telephones, independent line.....	\$2 00 per month
Residence telephones, independent line.....	1 16 $\frac{2}{3}$ per month
Residence telephones, independent line (including county service)	1 50 per month
Rural party lines.....	1 16 $\frac{2}{3}$ per month
Switching farmer lines owned by subscribers.....	66 $\frac{2}{3}$ per month
Business and residence telephones on same line (in- cluding county service).....	3 25 per month

Hearing was held at Chicago on March 24, 1914; *Mr. L. C. Morris* appeared for the applicant; no one appeared objecting. The testimony offered by Mr. Morris was of very little value, due to the fact that he was only recently elected president of the utility and the case was continued in order that the Commission might have an opportunity to make an examination of the properties and an investigation of conditions.

Records of the cost of the original construction are not available. The first exchange was built at Warren in 1898 and the system was extended from time to time until exchanges were built in all of the principal towns in Jo

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Daviess County and a system of toll lines extended over the county.

The utility is now furnishing service to approximately 2,200 patrons as shown by the following report of station development:

TERRITORY AND STATION DEVELOPMENT.

PLACE	ESTIMATED POPULATION	NUMBER OF STATIONS					
		DATE MAY 1, 1914					
		<i>Inde- pendent business</i>	<i>Inde- pendent residence</i>	<i>Rural</i>	<i>Service</i>	<i>Total</i>	<i>Gain dur- ing past year</i>
Warren.....	1,331	66	170	125	119	480	No record
Galena.....	4,835	94	161	33	95	383	No record
East Dubuque.....	1,253	26	80	138	.....	244	No record
Stockton.....	1,096	53	183	42	270	548	No record
Apple River.....	581	27	24	57	93	201	No record
Scales Mound.....	388	13	23	.....	95	131	No record
Elizabeth.....	703	6	3	.....	14	23	No record
Hanover.....	653	14	29	111	.....	154	No record
Woodbine.....	103	.....	.....	.....	36	36	No record
TOTAL.....	.....	299	673	506	722	2,200	No record

An examination of the property and an investigation of local conditions were made in the month of May, 1914. In the month of June, 1914, the utility made and submitted to the Commission an inventory of its entire property and from such inventory the engineers for the Commission estimated the value of the exchange and farmer line property new at \$80,200 and the present value at \$64,160.

Detailed records of earnings and expenses are not available for any period prior to January 1, 1913. A statement for the year 1913 and for the four months ending April 30, 1914, was prepared by the Commission from a report submitted by the utility. The statement for the year 1913 follows:

STATEMENT OF REVENUES AND EXPENSES.

12 Months Ending December 31, 1913.

	Total	Per Station
<i>Gross Revenue:</i>		
Exchange.	\$27,198 83	\$12 36
Toll.	1,312 77	60
TOTAL	<u>\$28,511 60</u>	12 96
<i>Expenses:*</i>		
Operating.	\$8,939 96	4 06
Repairs.	7,637 96	3 47
Depreciation.	6,698 40	3 04
Taxes.	112 01	05
TOTAL	<u>26,294 33</u>	11 95
NET REVENUE	<u><u>\$2,217 27</u></u>	1 01
<i>Sundry net earnings:</i>		
TOTAL NET EARNINGS.	\$2,217 27	1 01
Deduct interest	1,428 11	65
Balance net profits.	<u>\$789 16</u>	36
Deduct dividends	3,906 00†	1 78†
Undivided profits	3,116 84†	1 42†

The expenses per station are very low as compared with the general level of utilities operating in similar communities and furnishing the same class of service, and it seems that it would be reasonable for the purposes of this case to accept the reported operating expenses for the year ending December 31, 1913, as expenses of a normal year.

According to the installation of May 1, 1914, exchange revenues for town and rural telephones under the proposed schedule would be as follows:

* An error in the expense accounts is apparent.—Ed.

† Indicates loss.

REVENUES OF PITCHER TELEPHONE COMPANY, WITH INSTALLATION AS OF
MAY 1, 1914.

<i>Classification</i>	<i>Rates</i>	<i>Revenues</i>
299 business telephones	\$24 00	\$7,176
615 residence telephones	14 00	8,610
58 residence telephones	18 00	1,044
506 rural telephones	16 00	8,096
722 service stations	8 00	5,776
2200		\$30,702

With exchange operating expenses, including repairs, depreciation and taxes amounting to \$26,294.33 as reported for the year ending December 31, 1913, the amount available for interest would be \$4,407.67.

Reference to the foregoing summary shows that the utility is in need of more revenue than can reasonably be expected from the proposed schedule of rates. The proposed rate for switching service stations is out of line with the general average rate charged for the same service in towns and villages of the same class. From all of the comparative data now available, it appears that \$6.00 per annum per station is the maximum charge fixed by telephone companies for switching rural stations owned by subscribers, but the service furnished such subscribers by the petitioner cannot be included in this classification for the reason that all such subscribers receive service over the entire exchange system of the petitioner and for the purpose of rate making these rural subscribers should be considered as an integral part of the local exchange system and the rates should be determined in the same manner as local service rates, with due regard of course, to difference of cost of service between local and rural lines.

In order to have a safe return of 7 per cent. on the value of its property the utility must have from \$4,491 to about \$5,614 per annum depending upon whether the present value or cost new of the property is accepted as the basis of computing interest. In the absence of accurate information

bearing on the financial history of the utility it is difficult to determine just what final value should be placed upon the property, but it seems that interest may reasonably be placed upon a value not far from the cost of the property new.

The question then arises as to what rates should be charged in order to enable the utility to secure the necessary increase in revenue. The present schedule provides only for individual line service and in preparing the proposed schedule the applicant did not contemplate the installation of party line service. The introduction of a schedule of rates with a lower charge for party line service than for independent line service would probably lead many patrons who are at present receiving independent line service to choose party line service at a lower rate, but it appears that such a schedule of rates should be established in order that the patrons of the utility might have the opportunity to subscribe for a class of service that will meet their requirements at a rate in keeping with the value of the service to them.

It is not likely that many business telephones would be affected by such a schedule of rates but a large part of the residence installations would probably be placed on party lines. This change in service under the equitable schedule would not reduce estimated revenues. The facts available in this case are not sufficient to enable an accurate apportionment to be made in order to determine the exact cost of each class of service. The schedule now in effect is far out of line with what has been found suitable in the telephone business and the changes which should be made are not difficult to determine. The rates for independent line service should be placed at a higher point than for party line service but it will not be possible to determine now just how much revenue will be produced as there will undoubtedly be a large number of changes in residence classifications in order to avoid the effect of the higher rates.

The following table shows what the revenues would be under a schedule as outlined, assuming the number of

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changes in classifications that will follow the introduction of party line service:

REVENUES OF PITCHER TELEPHONE COMPANY WITH INSTALLATION AS OF
MAY 1, 1914.

<i>Classifications.</i>	<i>Proposed Rates.</i>	
	<i>Rates.</i>	<i>Revenues.</i>
225 independent line business telephones, at..	\$27 00	\$6,075
74 two-party business telephones, at.....	21 00	1,554
450 independent line residence telephones, at..	18 00	8,100
165 two-party residence telephones, at.....	12 00	1,980
58 independent line residence telephones (including county service), at.....	21 00	1,218
506 rural telephones, at.....	15 00	7,590
722 service stations, at.....	7 00	5,054
2200		\$31,571

Exchange earnings according to this schedule would be \$4,372 greater than under existing rates and \$869 greater than the revenues under the rates proposed by the petitioner on the basis of the installation as of May 1, 1914.

In view of the conditions and the facts as determined by the Commission it does not seem that a schedule of rates different from that outlined above should be adopted. This schedule should enable the utility to make adequate provision for interest and depreciation without being in any way unreasonable to its patrons. If the changes in classification follow the lines suggested above and expenses are not increased, the total earnings under the proposed rates will be \$5,276 per annum, which will allow 6½ per cent. for interest on the cost of the property new. Actually the increase may be in excess of this but such excess will not increase the interest more than one-half of 1 per cent., making the total 7 per cent., which considering the character of the business is not excessive.

It is, therefore, ordered, That the applicant, the Pitcher Telephone Company be, and the same is hereby, authorized to discontinue its present schedule of rates, including the combination rate for business and residence telephones at all of its exchanges and substitute the following schedule:

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<i>Classification</i>	<i>Rates</i>
Individual business telephones.....	\$27 00 per year
Two-party business telephones.....	21 00 per year
Individual residence telephones.....	18 00 per year
Two-party residence telephones.....	12 00 per year
Individual residence telephones (including county service).....	21 00 per year
Rural telephones	15 00 per year
Service stations	7 00 per year

It is further ordered, That the above schedule of rates shall take effect from and after the first day of August, 1914, and that said schedule be filed, posted and published as provided by Section 34 of "An Act to provide for the regulation of public utilities."

By order of the Commission this thirty-first day of July, 1914.

Dated at Springfield, Illinois.

CITIZENS OF ARMINGTON, ILLINOIS, v. EMINENCE MUTUAL TELEPHONE COMPANY AND BAKER TELEPHONE SYSTEM.

No. 2341.

Decided July 31, 1914.

Approval of Agreement for Physical Connection.

OPINION AND ORDER.

The complaint filed herein sets forth that the inhabitants of Armington, Illinois, are severely handicapped because of the fact that there is no telephone connection between the lines of the Eminence Telephone company and the lines of the Baker Telephone System in Armington, Illinois, and asks that the two companies be compelled to connect their lines and interchange service.

On May 19, 1914, the case came on for hearing at the offices of the Commission at Springfield, Illinois. M. S. Hainline, trustee of the village of Armington, appeared for complainant. Earl Johnson, president of the Eminence

Mutual Telephone Company, appeared for that company, and *J. Howard Baker*, president of the Baker Telephone System, *B. F. Baker*, a director, and *Ben B. Boynton*, its attorney, appeared for the Baker Telephone System.

At the hearing the Baker Telephone System opposed the granting of the relief asked for on the ground that its business would be damaged by the physical connection, since its rate for telephone service is \$18.00 per year and the Eminence Mutual Telephone Company's rate is \$10.00 per year and the natural tendency of subscribers would be to subscribe for the cheaper service. It developed at the hearing that the two defendants would in all probability be able to agree upon a connecting arrangement that would protect both companies, and, therefore, the case was continued until June 2, 1914, at which time the contract executed by the two defendants was submitted for the approval of this Commission.

The contract provides that the physical connection shall be made and the cost borne by the Baker Telephone System; that this shall include the physical connection of the rural lines of the Eminence Mutual Telephone Company running south of Armington with the Armington exchange of the Baker Telephone System and shall also include the connection of the toll lines of the Mutual company extending from Atlanta, Illinois, through Armington to Minier, Illinois, with said Armington exchange.

The contract provides somewhat in detail the terms upon which said connection is to be made.

The Commission, being fully advised in the premises, finds:

1. That public convenience and necessity require that the physical connection be made between the lines of the above mentioned companies.

2. That the terms of the contract entered into between said companies providing for said physical connection are reasonable and just.

It is, therefore, ordered, That the contract dated May 21, 1914, between the Baker Telephone System and the

Eminence Mutual Telephone System which provides for a physical connection at Armington, Illinois, between the lines of said companies be, and the same hereby is, approved, and that said connection shall be made within thirty days from the date of this order.

By order of the Commission this thirty-first day of July, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE ILLINOIS MUTUAL
TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

No. 2632.

Decided July 31, 1914.

**Elimination of Discrimination between Stockholders and Non-stockholders
— Discontinuance of Business Rate — Flat Rate for All Subscribers.**

OPINION AND ORDER.

This is an application for authority to discontinue discriminatory rates and charges as applied to stockholders and non-stockholders; also for authority to discontinue the rates of \$18.00 per year for business telephones.

Application was filed with the Commission on June 13, and sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system in the village of Seward, Winnebago County, and that as such public utility it is subject to the provisions of an act entitled "*An Act to provide for the regulation of public utilities.*" Application further sets forth that the rates charged stockholders for all classes of service are less than the rates charged non-stockholders, and application is made for authority to change the rates in order to discontinue this discrimination.

The regular schedule rate for business telephones is \$18.00 per year. It appears that there has been some objection on the part of the subscribers to this class of service and it is the desire of the utility to discontinue the business rate and charge all subscribers a rate of \$12.00 per year.

The Commission has ruled that it is unlawful to exact higher rates from subscribers who are not stockholders, directors and officers of a public utility than from subscribers who are stockholders, directors and officers; that the subscriber who is a stockholder has no rights or privileges which are denied to a subscriber who is not a stockholder, and that the stockholder must look to the profits of the business for his return on his investment, and

It is, therefore, ordered, That the discriminatory rates and charges as applied to stockholders and as set forth in the application of the petitioner, the Illinois Mutual Telephone Company, shall be discontinued, and the petitioner is hereby authorized to discontinue the rate of \$18.00 per year for business telephones in the village of Seward, Illinois, and charge all subscribers a rate of \$12.00 per year.

It is further ordered, That the above changes in rates and charges shall take effect from and after the first day of August, 1914, and that said changes be filed, posted and published as provided by Section 34 of "*An Act to provide for regulation of public utilities.*"

By order of the Commission this thirty-first day of July, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE WILLIAMSVILLE
AND SHERMAN TELEPHONE COMPANY FOR AUTHORITY TO
ABANDON ITS SHERMAN EXCHANGE AND TO TRUNK
ITS SHERMAN SUBSCRIBERS INTO ITS WILLIAMSVILLE
EXCHANGE.

No. 2653.

Decided July 31, 1914.

**Discontinuance of Exchange Furnishing Day Service Only Authorized —
Subscribers Served Through Another Exchange Furnishing
both Day and Night Service.**

OPINION AND ORDER.

The petition filed herein shows that the petitioner is engaged in the management and operation of a telephone

system in the villages and vicinities thereof, of Williams-ville and Sherman, Illinois, and that its principal place of business is in Williamsville, Illinois; that it has at present at its Sherman exchange only 41 subscribers; that at present only day service is given at Sherman and only one operator is employed there; that the subscribers to the Sherman exchange demand night service and that night service is given at the Williamsville exchange; that if it is given night service, the operating expenses, excluding therefrom depreciation and a rate of return upon the investment, would exceed the operating revenue; that the rental rates for its telephones at its Williamsville and Sherman exchanges for business, residence and rural service is \$15.00 per year; and that Sherman is only $6\frac{1}{4}$ miles from Williamsville. Petitioner asks for an order authorizing it to abandon its Sherman exchange and to trunk its Sherman subscribers to its Williamsville exchange and to serve them through its Williamsville exchange.

The case came on for hearing at the offices of the Commission at Springfield, Illinois, July 21, 1914. *C. E. Yocum*, secretary of petitioner, and *Ben B. Boynton*, attorney for petitioner, appeared in support of the petition. No one appeared in opposition.

The Illinois Public Utilities Commission Law provides in Section 27 that "Unless the consent and approval of the Commission is first obtained, no public utility may assign, transfer, lease, mortgage, sell, or otherwise dispose of or encumber the whole, or any part, of its franchises, leases, permits, plant, equipment, business or other property."

This proposed abandonment by the petitioner also affects the service and facilities furnished the petitioner's subscribers at its Sherman exchange, but as it appears that at the present time, said exchange is being operated at a loss and as the proposed change will result in furnishing a better class of service than is now being furnished, the petition should be granted.

It is, therefore, ordered, That the petitioner be authorized to abandon its Sherman exchange and to trunk its

Sherman subscribers into its Williamsville exchange, and to make them subscribers to the Williamsville exchange.

By order of the Commission this thirty-first day of July, 1914.

Dated at Springfield, Illinois.

IN THE MATTER OF THE APPLICATION OF THE VANDALIA-SOUTHWESTERN TELEPHONE COMPANY OF PITTSBURG, ILLINOIS, FOR AUTHORITY TO CHANGE RATES.

No. 2690.

Decided July 31, 1914.

Increase in Rates — Elimination of Discrimination between Stockholders and Non-stockholders — Discontinuance of Concessions to Subscribers Owning Instruments.

OPINION AND ORDER.

Application in this matter was filed with the Commission on June 25, 1914, and sets forth that the petitioner is a public utility engaged in the management and operation of a rural telephone system in Fayette and Bond Counties, with headquarters at Pittsburg, Fayette County, Illinois, and that as such public utility it is subject to the provisions of an act entitled "*An Act to provide for the regulation of public utilities.*"

Application sets forth that the rates of the petitioner now in force and effect are as follows:

Subscribers (stockholders) who furnish their own instruments	\$0.50 per month
Subscribers (non-stockholders) who furnish their own instrument .....	.75 per month
Subscribers who furnish no part of the line or equipment	1.00 per <u>month</u>

Application is made for authority to establish a uniform rate of \$1.00 per month for service to all subscribers for the reason that the rates now in effect do not produce sufficient revenue for the proper operation and maintenance of

the telephone system and also because of the difference in rates charged subscribers who are stockholders, subscribers who furnish their own telephones and subscribers who are not stockholders and furnish no part of the equipment.

In accordance with the ruling of this Commission that it is unlawful to exact higher rates from subscribers who are not stockholders, directors and officers of a public utility than from subscribers who are stockholders, directors and officers; that the subscriber who is a stockholder has no rights or privileges which are denied to a subscriber who is not a stockholder, and that the stockholder must look to the profits of the business for his return on his investment, a public hearing in this case is considered unnecessary, and

It is, therefore, ordered, That the discriminatory rates and charges as set forth in the application be discontinued, and that the rate of \$12.00 per annum now charged subscribers who are not stockholders be applied to all subscribers without discrimination, effective as of August 1, 1914, and notice of such change in the schedule rates is to be filed with the Commission and published as required by law.

By order of the Commission this thirty-first day of July, 1914.

Dated at Springfield, Illinois.

NOTE.—Discrimination between stockholders and non-stockholders was eliminated in the matter of the *Application of the Watson and Gilmore Rural Telephone Company for Authority to Change Rates*, Illinois State Public Utilities Commission, No. 2756. Decided July 24, 1914. The Commission based its decision on the principles set forth in Conference Ruling No. 8, April 24, 1914, printed in Commission Leaflet No. 31, at page 31.—Ed.

INDIANA.

Public Service Commission.

IN THE MATTER OF THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO INCREASE THE RATES PRESCRIBED BY THE FRANCHISE OF A PUBLIC UTILITY WHICH HAS SURRENDERED SAID FRANCHISE AND IS OPERATING UNDER AN INDETERMINATE PERMIT AS PROVIDED BY THE SHIVELY-SPENCER PUBLIC UTILITY ACT.

Dated June 30, 1914.

Commission Without Authority to Increase Rates Prescribed by Surrendered Franchise of a Public Utility Operating under an Indeterminate Permit.

Held: That where a public utility operating under a franchise from a municipality, granted since the taking effect of the session laws of 1905, and fixing maximum rates, surrenders its franchise as provided for in the Shively-Spencer Public Utility Act, the Commission has no authority to grant such public utility permission to increase its rates at any time during the period within which such franchise would have existed had it not been surrendered;

That, nevertheless, under the conditions stated above, the municipality does not acquire a contractual interest in the franchise which may not be taken away from it during the time fixed in the franchise by joint action of the State and utility.*

OPINION OF ATTORNEY FOR THE COMMISSION.

I have yours of the twenty-third instant asking an opinion upon the two questions propounded by you therein. Your first question is as follows:

“ In case a public utility operating under a franchise from a municipality which has been granted since the taking effect of the session laws of 1905, and which fixes the rate for commercial lighting, in case of an electric light plant, and also an agreed price for municipal lighting for a definite period less than twenty-five years, and where the public utility

* Editor's headnote.

surrenders its franchise as provided for in the Shively-Spencer utility act, may this Commission, upon the proper application, authorize such public utility to increase or raise its rates, tolls and charges at any time during the period which such franchise would have existed if it had not been surrendered?"

In answer to this question I beg to say I am of the opinion that it must be answered in the negative. As you are well aware, the powers of the Commission are conferred exclusively by the statute of the State. Two things must concur in order to vest in the Commission authority over any given matter; namely, first, it must have been within the power of the legislature to confer such authority upon the Commission; second, the legislature must have conferred such authority upon the Commission. In the matter in hand I am of the opinion that it was within the power of the legislature to have conferred authority upon the Commission to have increased the rates mentioned in your question upon surrender of the franchise by the utility, but I am equally of the opinion that the legislature has not conferred such power upon the Commission.

Section 7 of the Public Service Commission Act (Acts 1913, p. 171), contains this proviso:

"Nothing in this act contained shall authorize any public utility during the remainder of the term of any grant or franchise under which it may be acting at the time this act takes effect to charge for any service, in such grant or franchise contracted, exceeding the maximum rate or rates therefor, if any, that may be fixed in such grant or franchise."

I think this language can receive but one construction with reference to the question you propound. It limits the power of the Public Service Commission with reference to fixing the rates for an utility service during the term of any contract it had with the city at the time the act went into effect. That is to say, it limits the power of the Commission in respect to increasing or raising the rate to the maximum rate fixed in the contract.

If in any case conditions are such as that reason or justice require a rate should be raised above the limit named, I think the only safe thing would be to have the legislature

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change the statutory provision quoted, so as to remove the limit on the power of the Commission.

Your second question is as follows:

"Whether under the act of 1905, the municipality itself may acquire a contractual interest in a franchise which may not be taken away from it during the time fixed in the franchise by joint action of the State and utility?"

In answering this question I assume that the phrase "contractual interest in a franchise," contained therein, refers to a contract for "commercial lighting" and "municipal lighting," mentioned in the first question above, and it is with reference to such a contract that I answer as follows:

I am also of the opinion that this second question is to be answered in the negative. That is to say, by proper steps, the State with the consent and co-operation of the utility may modify or change the contract mentioned as against the city, and thereby take away its contractual rights thereunder. The city in entering into the contract in the first place acts only through its officers. Under the act of 1905 these officers in some instances were the city council, in other instances the board of public works and the city council. In the absence of any legislation limiting or restraining the action of these city officers, they at any time after the contract was entered into could modify the same by entering into a new contract with the utility. That is to say, such officers could so do and bind the city so long as the power remained with them. The State could take the power from those officers at any time it saw fit through its legislative department and vest it in other officers. By the Public Service Commission Act of 1913 it has taken from city officers certain powers which they theretofore exercised and conferred those powers on the Public Service Commission, which Commission, as to the powers so conferred, now stands in the shoes, as it were, of the city council with reference to them. The Commission is the representative of the State, and of each city within it, to

the extent that power has been conferred upon the Commission.

As you are well aware the power to regulate rates for public service always existed in the State through its legislative department. Whatever power in that respect was exercised either by legislation or contract by said officers was a power conferred upon them by the State. The State could withdraw this power from them and confer it upon the Public Service Commission, as it has attempted to do by the act of 1913, where the contract and utility consents and co-operates by surrendering its franchise, etc.

KANSAS.

Public Utilities Commission.

**IN THE MATTER OF THE APPLICATION OF GEORGE W. DICKSON,
PROPRIETOR OF THE KIMEO TELEPHONE SYSTEM, FOR
PERMISSION TO CHANGE A RULE RELATING TO THE COL-
LECTION OF TELEPHONE RENTALS.**

Docket No. 837.

Decided July 7, 1914.

**Rentals made Payable Quarterly in Advance—Higher Rates Authorized
if Rental not so Paid.**

ORDER.

Now, on this seventh day of July, 1914, comes on to be heard the application of George W. Dickson, proprietor of the Kimeo Telephone System, for permission to change his rule relating to the collection of telephone rentals, the applicant appearing in person, due public notice having been given of this hearing; the applicant testified that his present rate was \$12.00 per telephone per annum in advance, and that he desired to vary the rule so as to provide for the payment of rentals quarterly in advance, and if not so paid in advance to charge the rate of \$15.00 per telephone per annum, payable quarterly.

After considering the application, hearing the evidence, and being duly advised in the premises, the Commission finds that the prayer of the petitioner should be granted.

It is, therefore, ordered, That George W. Dickson, proprietor of the Kimeo Telephone System, be, and he is hereby, permitted to file with this Commission his rule for the collection of telephone rentals as follows, to wit:

Terms: \$12.00 per telephone per annum in advance, payable quarterly;
\$15.00 per telephone per annum, if not paid in advance, payable quarterly.

It is further ordered, That the said rule shall be filed with this Commission within thirty days from date hereof and that the same shall be effective on and from thirty days from date hereof, and so remain until the further order of this Commission.

Dated at Topeka, Kansas, this seventh day of July, 1914.

MASSACHUSETTS.

Public Service Commission.

MEMORANDUM BY THE COMMISSION RELATIVE TO THE FURNISHING BY COMMON CARRIERS OF FREE OR REDUCED RATE SERVICE FOR CHARITABLE PURPOSES.

P. S. C. 451.

Dated August 6, 1914.

Free and Reduced Rate Service for Charitable Purposes — Limitation of Words "Charitable Purposes."

MEMORANDUM.

Under Section 18 of Chapter 784 of the Acts of the year 1913, common carriers are prohibited from furnishing free transportation with certain exceptions, one of which is that the act shall not prohibit the common carrier from granting free or reduced rate service "for such charitable purposes as may be approved by the Commission." After notice to the various companies, requesting the filing with the Commission of a list of the various organizations to which such corporations proposed to issue free or reduced rate service, the Commission gave a public hearing on May 5, 1914, in order to determine, as far as practicable, the principles which should guide the Commission in approving free or reduced rate transportation for charitable purposes. The initial responsibility for granting such free or reduced rate service rests, of course, upon the corporations themselves; the Commission's authority is limited to approving or disapproving the carriers' decisions. Under these circumstances it is not practicable to make any general or all-inclusive order. All that can be done is to indicate certain principles which may assist the carriers in determining what applications they shall accept or reject.

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The words "charitable purposes" are capable of broad construction. (See *Jackson v. Phillips*, 14 Allen, 539.) Churches, religious organizations, schools and colleges are all public charities within the meaning of the law. There are special statutes providing for reduced rates for school children. In the judgment of the Commission, it would not be consistent with the public interest to permit common carriers to grant free or reduced rate service for any and all kinds of religious and educational institutions. Rather should the operation of this exception to the general prohibition be limited to needy classes—such as the inmates of hospitals, of homes for the aged, of orphans' homes, of day nurseries—to such enterprises as mothers' outings and other similar undertakings supported by benevolent and charitable societies and intended for the relief of suffering or to furnish opportunities for health to needy children and women and to others unable from their own resources to provide the requisite opportunities. Trips for school children, perhaps to visit the state house, Sunday school picnics, outings of athletic associations and clubs, and other similar purposes, which are mainly for pleasure and not intended, primarily, to relieve any real suffering or need, are not, in the judgment of the Commission, charitable purposes to which the carriers ought to contribute by granting free or reduced rate service not available to the general public.

MISSOURI.

Public Service Commission.

FARMERS' AND MERCHANTS' MUTUAL TELEPHONE COMPANY
v. THE MISSOURI AND KANSAS TELEPHONE COMPANY.

Case No. 72.

*Decided July 28, 1914.**

Compulsory Physical Connection.

This was a petition by the Farmers' and Merchants' Mutual Telephone Company asking that The Missouri and Kansas Telephone Company establish physical connection between its toll line and the local exchange of the complainant in the city of California. The Missouri and Kansas Telephone Company resisted the establishment of direct physical connection, but offered the complainant indirect physical connection through the exchange of the California Telephone Company, with which the toll line of the respondent was already connected by a bridge. Under stipulation a sixty day trial of the indirect physical connection through the exchange of the California Telephone Company was made, but this means of connection failed to prove satisfactory to the complainant. The complainant thereupon demanded that it be connected directly with the toll line of the respondent company by means of a bridge instead of being obliged to send its messages through the exchange of the California company.

It further appeared that the respondent had, since the filing of the complaint, removed the toll board which it had formerly maintained at California, to Tipton. The Commission found that to make the connection at the time the complaint was originally filed and at which time a toll board was located in California, would have cost the respondent a very small sum. The respondent claimed that to make the connection under the present conditions would cost approximately \$2,000, as it was not feasible to bridge the complainant over the same line over which the California Telephone Company was bridged, as this would cause confusion and inaccuracy in accounting and delays in the transmission of toll messages.

Held: That public convenience and necessity demand direct physical connection between the complainant's exchange and the toll line of the

* Opinion modified on motion for rehearing. Rehearing denied. August 11, 1914.—Ed.

respondent without the interposition of any other exchange; that physical connection can reasonably be made by means of a bridge in the same manner in which the lines of the California company are already connected; and that no irreparable loss will result to either party by reason of the establishment of such a connection.

The Commission accordingly ordered that physical connection be established, leaving the complainant and the defendant to agree upon the terms of such connection, but retained jurisdiction for the purpose of fixing these terms should the companies be unable to agree.

Constitutionality of Statute — Jurisdiction of Commission.*

Held: That Section 93 of the Public Utilities Act, providing for physical connection, is not in violation of the Fourteenth Amendment of the Constitution of the United States, as it does not deprive the defendant of its property without due process of law;

That under said Section 93 the Commission has jurisdiction to order physical connection in the instant case.†

APPEARANCES:

John M. Williams, for complainant.

J. W. Gleed and D. E. Palmer, for defendant.

OPINION.

I.

THE COMPLAINT.

On July 14, 1913, the complainant herein, Farmers' and Merchants' Mutual Telephone Company, filed its complaint against the above named defendant, alleging that said defendant had refused to make physical connection between the local exchange of complainant and the long distance or toll lines of defendant, in violation of the provisions of Section 87, Sub-section 3 of the Public Service Commission Law, thus discriminating against said complainant, and praying for an order of the Commission requiring defendant to make a physical connection.

* The matter of the constitutionality of the statute providing physical connection and the jurisdiction of the Commission thereunder was omitted from the modified opinion.—Ed.

† Editor's headnote.

Defendant, The Missouri and Kansas Telephone Company, answering, says "that it already has one satisfactory terminal agent in the city of California, namely, the California Telephone Company, and is unwilling to employ two terminal agents in the same town or to connect with rival exchanges in the same town," and further, "this defendant is informed and believes that the complainant can secure toll connections with this defendant through the said California Telephone Company, and this defendant has no objection to a connection being made in that way," and further, the defendant suggested that there was a defect in parties and that the Commission could not adjudicate the issues herein unless the said California Telephone Company was made a party hereto. A hearing upon this complaint was set for September 24, 1913, in the city of California, Missouri, at which time it was stipulated by and between the parties to this complaint that a trial of sixty days from October 1 to November 29, 1913, should be made of a physical connection of complainant's and defendant's telephone lines through the switchboard of the California Telephone Company, the defendant, The Missouri and Kansas Telephone Company, making the arrangements with the California Telephone Company and also installing a circuit from complainant's switchboard to the switchboard of the California Telephone Company at its own expense. In this stipulation it was agreed that the test was to be without prejudice to either party and that either party reserved the right to file amended complaint or amended pleading. Thereupon the case was continued. On the twenty-ninth day of November, 1913, the complainant filed with the Commission formal notice that the arrangement entered into under the stipulation had proved unsatisfactory to it, and prayed for a hearing on the complaint, so this case was heard in the city of California, Missouri, on the twenty-fifth day of February, 1914, before Commissioner Shaw, at which time leave was given to file amended complaint and answer.

In its amended complaint filed April 17, 1914, complainant alleges in brief that physical connection can reasonably be made between the exchange of complainant and the toll lines of defendant, and that public necessity and convenience will be subserved thereby under the provisions of Section 93, Sub-section 3 of the Public Service Commission Law, and in addition renews the allegations of the original complaint as to discrimination under Section 87, Sub-section 3.

Defendant, answering the amended complaint, denies that physical connection as prayed for can reasonably be made, denies that public convenience and necessity will be subserved, avers that there is a defect of parties in view of an alleged exclusive contract between defendant and the California Telephone Company, avers that the arrangement under the stipulation, considering its contract with the said California Telephone Company, is reasonable and satisfactory and "of greater public convenience than would be service given by and to a division of defendant's available circuit in California between the two local switchboards." [Defendant further denies the jurisdiction of the Commission to make an order requiring compulsory physical connection, averring that Section 93, Sub-section 3, is unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States, and that an order requiring physical connection would "deprive defendant of its property without due process of law and deprive it of the equal protection of the law, and for said reason would be unconstitutional and void under the Fourteenth Amendment of the Constitution of the United States.]*

Upon the issues thus joined and upon the evidence, together with briefs and argument of able counsel, the cause is submitted and is now before us for determination.

* That portion of the opinion enclosed by brackets was omitted from the modified opinion of the Commission.—ED.

II.

THE FACTS CONSIDERED.

Complainant, Farmers' and Merchants' Mutual Telephone Company, is a domestic telephone corporation incorporated in 1909, having its principal office in the city of California, Moniteau County, Missouri, and operating a local exchange in the said city of California with about 130 subscribers in said city and some 380 subscribers in Moniteau County outside said city, or about 510 subscribers altogether, the number having increased from about 480 at the time the complaint was filed. Complainant has physical connection and interchange of service with telephone lines in several towns and villages in Moniteau County, such as Latham, 12 miles distant, High Point, 10 miles, Clarksburg, 6 miles, McGirks, 6 miles, and Jamestown, 12 miles, all of the circuits, with one exception, being two wires, or complete metallic circuits. Of about 130 subscribers of complainant located in the city of California, few if any are without the advantages of long distance or toll line telephone service over the lines of defendant, The Missouri and Kansas Telephone Company, and it might be noted, over the toll lines of the Kinlock Telephone Company as well, through the exchange of another local telephone company, the California Telephone Company. However, an undetermined number, though only a few, of complainant's subscribers not having telephones connected to the exchange of the California Telephone Company, are inconvenienced somewhat by having to go to the central office of that company to use the long distance telephone.

On the other hand, very few of about 380 subscribers of complainant located in the county outside of the city of California have access to long distance or toll lines at all.

Defendant, The Missouri and Kansas Telephone Company, is a domestic telephone corporation operating toll lines and a number of local exchanges in western Missouri and in Kansas. It has no local exchange in the city of California, and since October 7, 1913, has had no "toll board" there. The "toll board" and "checking center"

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having been moved to Tipton, some thirteen miles west of California, on the above date. Through the city of California defendant has installed and operates two full metallic copper circuits and one "phantom circuit" imposed thereon, and also a local iron circuit which connects the checking center at Tipton with the towns of Bunceton and Clarksburg, which are between Tipton and California, and the towns of McGirks and Centertown, which are to the east of California. The four towns just mentioned have long distance service by connections "bridged" across this iron circuit. The two physical copper circuits and the phantom circuit are operated as through lines from Sedalia to Jefferson City, but one of the physical circuits is cut in at California to the switchboard of the California Telephone Company and is used partly for through business and partly for conversations from and to the city of California. The California business from both the local companies, as tried out under the agreements of the stipulation referred to, amounts to approximately one-half the full or standard load on this latter circuit, and it is consequently used for the "overflow" through business when the one through physical circuit and the phantom circuit are loaded. It is to this physical circuit, cut in at California, that complainants pray for physical connection, and it is to this circuit that complainant has access through the switchboard of the California Telephone Company under the stipulation.

The California Telephone Company has for a number of years operated a local exchange in the city of California, Missouri, and is alleged to have a contract as terminal agent with The Missouri and Kansas Telephone Company, defendant herein, though such contract was not offered in evidence. This is the company through the switchboard of which complainant acquired for 60 days for a trial without prejudice connection with the toll lines of defendant under the stipulation, as previously stated. We understand that this arrangement has been continued and is the indirect physical connection which defendant is willing to make with the lines of defendant.

III.

MOVING OF TOLL BOARD AND CHECKING CENTER.

At the time this complaint was filed, and when the stipulation was entered into with the approval of the Commission, and until October 7, 1914, defendant maintained and operated a toll board and checking center in the city of California with two operators. It appears that a number of years ago this toll board and checking center were at Tipton and were moved from there to California where they remained for some four years before being moved back to Tipton. No allegations as to ulterior motives in moving this toll board and checking center were made, and it appears to have been moved back because Tipton became a more logical checking center when a line was constructed south from Tipton to Versailles. However this may be, the fact remains that at the time of filing this complaint physical connection between complainant's exchange and the toll board of defendant could have very easily been made and very cheaply, as the two switchboards were about a city block apart in California, whereas the toll board now being in Tipton defendant contends that physical connection would necessitate an expenditure of approximately \$2,000 for a full metallic circuit between the same switchboards, as the toll board is now in Tipton. In other words, defendant pleads the result of its own act since the complaint was filed as a reason why physical connection cannot reasonably be made.

IV.

DISCRIMINATION.

This complaint was brought originally under Section 87, Sub-section 3, of the Public Service Commission Law, on the theory that defendant was discriminating against complainant and giving undue preference to its local rival, the California Telephone Company, and this allegation is also contained in the amended complaint, though it is there made a secondary or additional ground of complaint. In view of the fact that Section 93, Sub-section 3, of the Public Service

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Commission Law has provisions relating directly to physical connection and the grounds upon which the Commission shall decide such question, it appears unnecessary to discuss Section 87, Sub-section 3, so we will reserve our opinion as to this point until the question arises squarely upon the issue of discrimination, rather than physical connection.

V.

[JURISDICTION.]*

[Defendant in its answer to the amended complaint alleges that the Commission has not jurisdiction under Section 93, Sub-section 3, of the Public Service Commission Law, to order a physical connection as therein specified, but in its brief argues the question only very briefly, thus: "As to the general inequity of the prayer of the plaintiff see *The Pacific Telephone and Telegraph Company v. Eshleman*, 137 Pac. Rep. 1119." This case relied upon by defendant appears to bear out its contention, but this case appears to be an isolated one and out of line with recent decisions of commissions and courts, among which the following, together with the references therein, is very persuasive: *The Pacific Telephone and Telegraph Company v. Wright-Dickinson Hotel Company et al.*, No. 6245, in the District Court of the United States for the District of Oregon, where it is said:

"It is not a new or different use or burden that is required by the service, nor does another or different person, corporation or entity occupy or utilize the lines or system of the plaintiff company. It is still left in the full and unrestricted occupancy and operation of its own lines or system, except that it is required to observe and comply with a regulation that the Commission has deemed proper to impose upon it, namely, that it transmit also the messages coming from the hotels which originate on the wires of the Home company. This is not a taking of the plaintiff's property in any sense. It is but a reasonable regulation which is properly referable to the police power of the State. See *Pioneer Telephone and Telegraph Company v. Grant County Rural Telephone Com-*

* That portion of the opinion enclosed by brackets was omitted from the modified opinion of the Commission.—Ed.

pany, 119 Pac. 968; *Pioneer Telephone and Telegraph Company v. State*, 134 Pac. 398.

"The opposite view is entertained in an exhaustive and ably considered case from California—*The Pacific Telephone and Telegraph Company v. Eshleman*, 137 Pac. 1119—but we are unable to give assent thereto.

"We come all the more readily to our conclusion in view of the decree recently rendered in the District Court in the case of *United States v. American Telephone and Telegraph Company et al.*, and in which the plaintiff herein was a party defendant, whereby, upon assent of the parties defendant, various telephone and telegraph companies were ordered and directed to make physical connection of their systems and accept interchange of business and communication. Thus the plaintiff has in effect conceded the principle we announce.

"It follows furthermore that there has been no taking of property without due process of law; nor has there been a violation of the interstate commerce clause of the Constitution. See *Jacobson v. Wisconsin, Minnesota and Pacific Railroad Company*, supra."*

In view of the foregoing there appears little if any doubt as to the power of the Commission in regard to physical connection between telephone companies under the provisions of Section 93, Sub-section 3, of the Public Service Commission Law, nor of its constitutionality, and we so hold.]†

VI.

REASONABLENESS OF REQUIRING PHYSICAL CONNECTION.

Section 93, Sub-section 3, of the Public Service Commission Law, reads as follows:

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that a physical connection can reasonably be made between the lines of two or more telephone corporations or two or more telegraph corporations whose lines can be made to form a continuous line of communication, by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience and necessity will be subserved thereby, or shall find that two or more telegraph or telephone corporations have failed

* 179 U. S. 287.—ED.

† That portion of the opinion enclosed by brackets was omitted from the modified opinion of the Commission.—ED.

to establish joint rates, tolls or charges for service by or over their said lines, and that joint rates, tolls or charges ought to be established, the Commission may, by its order, require that such connection be made, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city or town, and the conversations be transmitted and messages transferred over such connection under such rules and regulations as the Commission may establish, and prescribe through lines and joint rates, tolls and charges to be made, and to be used, observed and in force in the future. If such telegraph or telephone corporations do not agree upon the division between them of the cost of such physical connection or connections or the division of the joint rates, tolls or charges established by the Commission over such through lines, the Commission shall have authority, after further hearing, to establish such division by supplemental order."

From Section 93, Sub-section 3, just quoted, it is plain that the Commission is empowered to order physical connection when it shall find that such a connection can reasonably be made and that public convenience and necessity will be subserved. Complainant, doing a local telephone business, prays for direct physical connection with the toll lines of defendant in the city of California. Defendant offers a connection with the California Telephone Company and through it with defendant's toll lines as arranged under the stipulation.

At the time the complaint was filed, also four years prior thereto and until October 7, 1913, physical connection could have been made between the switchboard of complainant and the toll board of defendant located about a block away by the expenditure of a few dollars, for less, in fact, than the connection offered by defendant and actually made by defendant under the stipulation, and defendant through such a connection would have received the proceeds of additional toll business, defendant's share of which under the stipulation amounted to approximately \$12.00 per month, that is, about 75 per cent. of \$16.00 per month. Since October 7, 1913, when the toll board was moved to Tipton, defendant contends that it will cost \$2,000 to make satisfac-

tory physical connection, claiming that a separate circuit from complainant's switchboard in the city of California to defendant's toll board in Tipton is now the only satisfactory and direct physical connection between complainant and defendant's lines. The testimony of defendant's witnesses was to the effect that "bridging" a connection across the circuit now used by the California Telephone Company would be impracticable, would lead to inaccuracy in accounting and delays in the transmission of toll messages. It is to be regretted that evidence of disinterested witnesses was not obtained as to this point. The evidence of defendant's witnesses, however, shows that the California toll business from both local companies amounted to but half a load for this circuit, and further, the circuit map in evidence shows four different towns, Bunceton, Clarksburg, McGirks and Centertown, now bridged across the iron circuit passing through the city of California and using Tipton as a checking center. If these four towns can be satisfactorily served by one circuit, certainly two exchanges in the city of California whose total business amounts to but half a load on a copper circuit could be served equally well. We are not convinced by the opinion of defendant's witnesses that physical connection cannot reasonably be made by connecting the existing circuit from complainant's board to defendant's toll line which is cut in at the board of the California Telephone Company by "bridging" the "drops" on the two local boards across this circuit so that both can reach Tipton as a checking center, not simultaneously, but in turn as demands are made.

VII.

PUBLIC CONVENIENCE AND NECESSITY.

Some 300 or 400 of complainant's subscribers who now have local telephone service, but are without long distance and toll line service, will, by a physical connection of complainant and defendant's lines, have available through telephones in their residences or places of business,

long distance or toll service to suit their convenience and necessity. It appears that these subscribers living largely outside of the city of California would have somewhat better service by direct physical connection of complainant and defendant's lines than by the indirect connection of the same lines through the switchboard of the California Telephone Company. Defendant, however, contends that the public in general will be discommoded by delays if direct physical connection be made and that the indirect connection would be more satisfactory. It is well to note again, however, that defendant's contention is predicated upon the toll board's being in Tipton and not in the city of California, where it was when complaint was filed.

VIII.

CONCLUSIONS.

Having considered carefully and in detail all of the evidence, the Commission finds as a matter of fact that physical connection can reasonably be made and that public convenience and necessity will be subserved thereby to the mutual advantage of complainant and defendant, and that it will not result in irreparable injury to either party. Wherefore, under the provisions of Section 93, Sub-section 3, of the Public Service Commission Law, an order should be entered requiring direct physical connection between the switchboard of complainant and one of the toll lines of defendant passing through the city of California, not for the purpose of transmitting local messages or conversations between points in the said city of California, but to provide a continuous line of communication for the transfer of messages or conversations. If complainant and defendant telephone corporations do not agree upon the division between them of the cost of such physical connection or the joint rates, tolls or charges, or the division of the joint rates, tolls and charges over the lines of complainant and defendant, the Commission will, after further hearing, establish such divisions by supplemental order.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

Now, upon the evidence and after due deliberation,

It is ordered, 1. That the Commission finds as a matter of fact that physical connection of the exchange of complainant and one of the toll lines of defendant can reasonably be made and that public convenience and necessity will be subserved thereby.

Ordered, 2. That defendant, The Missouri and Kansas Telephone Company, do construct and maintain a suitable and efficient physical connection of the switchboard of complainant and one of the toll lines of defendant, within the city of California, Missouri, giving complainant direct connection with defendant and direct access to Tipton as checking center.

Ordered, 3. That defendant do receive and transmit toll messages over its lines from and to the telephone exchange of complainant upon equitable terms, efficiently, and without undue delay.

Ordered, 4. That complainant and defendant file and publish reasonable joint rates, tolls or charges for service over their said lines, without discrimination.

Ordered, 5. That this Commission retains jurisdiction to establish the division of the cost of this physical connection and the division of the joint rates, tolls or charges over said through lines by supplemental order after further hearing, provided complainant and defendant do not agree upon a division of the cost of the physical connection and upon a division of tolls.

Ordered, 6. That this order shall be in full force and effect on and after the twenty-eighth day of August, 1914.

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and remain in effect until changed or abrogated by the Commission; and that within ten days after service upon them of a copy of this order, complainant and defendant each shall notify the Commission, in the manner required by Section 25 of the Public Service Commission Law, whether the terms of this order are accepted and will be obeyed.

Dated at Jefferson City the twenty-eighth day of July, 1914.

BERGER TELEPHONE COMPANY v. JOHN R. HOLLAND.

Case No. 380.

Decided August 3, 1914.

Invasion of Occupied Field — Petition that Defendant be Restrained from Further Operation or Construction of Telephone Line until after Obtaining a Certificate of Public Convenience and Necessity Denied — Construction of Section 96 of the Missouri Public Service Commission Law.

It appeared that the defendant prior to April 15, 1913, the effective date of the Public Service Commission Law, had been operating a telephone business with a line extending from Welcome to Linn, where it connected with the exchange of the complainant; that on April 3, 1913, the connection with the complainant was discontinued and connection was made with a telephone in the city of Linn; that subsequent to April 15, 1913, the defendant, without having applied for a certificate of public convenience and necessity, built lines into the city of Linn where the complainant was already operating its telephone system.

Held: That, although the defendant had obtained no franchise from the city of Linn until after the passage of the Public Service Commission Law, his general object in owning and operating a telephone line from Welcome to Linn was to connect his subscribers in the country with people in the city, and the fact that he changed the manner of furnishing this service at Linn from supplying the connection through the complainant's switchboard by erecting his own lines in the city did not constitute the defendant a telephone corporation "hereafter formed," within the meaning of Section 96 of the Public Service Commission Law;

That, not being a telephone corporation "hereafter formed," the defendant did not violate the Public Service Commission Law in extending its telephone lines in the manner set forth.*

* Editor's headnote.

OPINION.

I.

Complaint was filed on the twenty-eighth day of April, 1914, by the Berger Telephone Company, a corporation operating a telephone exchange at Linn, Missouri. Defendant thereafter filed answer and a hearing was held by the Commission at its office in Jefferson City on the fifteenth day of June, 1914.

Complainant charges that defendant is a telephone corporation within the meaning of the Public Service Commission Law and was engaged in owning and operating a telephone line in and about Welcome in Osage County in this State; and that defendant did unlawfully, on or about the — day of November, 1913, construct a telephone line into the town of Linn (a city of the fourth class), and did set and maintain the poles of his said telephone line in the public highways of Osage County and the streets of the city of Linn; and that defendant did, on the — day of April, 1914, begin to construct a telephone line in the city of Linn and in the public streets thereof and extending beyond the city of Linn upon the public highways of Osage County; that all of said acts had been done without defendant having procured from the Public Service Commission a certificate of public convenience and necessity, and without having a franchise from the city of Linn and without the consent of the county court to place telephone poles in the public highways. Complainant prays that defendant be restrained from further operation or construction of said telephone line until he has obtained a certificate of public convenience and necessity from this Commission, etc., as required by Section 96, Public Service Commission Law.

Defendant, by his answer, admitted that he was engaged in owning and operating a telephone line or system in the city of Linn and vicinity, and that unless restrained, he would establish an exchange in the city of Linn; and alleged that he was engaged in operating and extending a telephone

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line and system within the city of Linn, and that he had a franchise so to do from the city of Linn; that he did not have a certificate of public convenience and necessity from this Commission, because he constructed and established said telephone line long prior to the effective date of the Public Service Commission Law; that all work done by him in the city of Linn and vicinity since the Public Service Commission Law became effective, was in repair and extension of his original telephone system, which was constructed prior to April 15, 1913; that defendant had permission of the county court of Osage County to construct his telephone line in the public roads; that the work of extending his telephone lines on the county roads since April 15, 1913, was the extension of lines which had been constructed prior to that date, and that defendant was not amenable to Section 96 of the Public Service Commission Law.

II.

Complainant had a telephone exchange at Linn and some ninety subscribers in Linn for telephone service, and also owned lines and exchanges at other places. Defendant was engaged in operating telephone lines for hire, extending from Welcome, Missouri, in various directions. He owned a line extending from Welcome to Linn, and which was connected with the switchboard of complainant at Linn, and for switching service defendant had agreed to pay complainant \$1.00 per telephone on his line per year; that the Berger company raised this charge to \$2.00 per year and defendant refused to pay it, and the Berger company, after giving defendant notice, disconnected his line from the Linn switchboard on April 3, 1914. Defendant's line extended from Welcome to Linn along the public road and defendant's line extended three or four hundred yards inside the limits of the town of Linn, and from that point defendant's line was on the poles of the Berger company to the switchboard, by their permission, and had been since 1911. Defendant claimed that he had a part interest in the poles of the Berger line extending to the switchboard

from where his line joined it. After defendant's line was disconnected from the Berger company's switchboard, defendant erected several poles and extended his line to the house of Charles Mahan and connected it with a telephone therein, about the eighth or tenth of April, 1913, and this connection continued until between the tenth and twentieth of June, 1913, at which time the Berger company took defendant's wire from their poles in the city of Linn upon which it had been extended to the switchboard.

Defendant procured a franchise from the board of aldermen to construct and operate a telephone system in the city of Linn in July, 1913, and in the fall of 1913 extended his telephone lines upon his own poles into the city of Linn, and thereabout on the public roads that he had permission of the county court to so use the public roads.

III.

Complainants contend that defendant is a "telephone corporation" within the meaning of Section 96, Public Service Commission Law, and should have had permission from this Commission to begin construction of the extension of his line in and about the city of Linn; and also contend that defendant, in extending his line, has violated Sections 90, 91, 92 and 93, Public Service Commission Law. The sections of the Public Service Commission Law, last named, have no application to the question as to whether or not defendant should have had a certificate of public convenience and necessity as required by Section 96, Public Service Commission Law. The question to be determined is whether or not defendant was a telephone corporation hereafter formed within the meaning of Section 96, Public Service Commission Law.

A "telephone corporation" is defined by Sub-section 17 of Section 2, Public Service Commission Law, as follows:

"The term 'telephone corporation,' when used in this act, includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, controlling or managing any

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telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire."

A "telephone line" is defined by Sub-section 18 of Section 2, Public Service Commission Law, as follows:

"The term 'telephone line,' when used in this act, includes conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telephone corporation to facilitate the business of affording telephonic communication."

Defendant was engaged in owning and operating a telephone line into the city of Linn and thereabout before April 15, 1913, the effective date of the Public Service Commission Law. Prior to April 3, 1913, defendant's line was connected with the switchboard of the Berger company. Thereafter, and prior to April 15, 1913, he connected his line with a telephone in the city of Linn. While it is true defendant had no franchise from the city of Linn until after the passage of the Public Service Commission Law, his general object and purpose in owning and operating a telephone line from Welcome to Linn was to connect his subscribers in the country with parties in the town. The fact that he changed the manner of furnishing the service at Linn from supplying the connection through the Berger company's switchboard by erecting his own lines into the city did not constitute defendant a telephone corporation "hereafter formed." He had commenced construction of his telephone lines from Welcome to Linn, both in the town of Linn and thereabout, before the enactment of the Public Service Commission Law and is, therefore, not a telephone corporation hereafter formed, within the meaning of Section 96, Public Service Commission Law, and defendant did not violate said Section 96 in constructing and extending his telephone lines in the manner as shown by the evidence in this case. *DeKalb County Telephone Co. v. Redman*,* 1 Mo. P. S. C. 123.

* Printed in Commission Leaflet No. 24, at page 414.—Ed.

The complaint should, therefore, be dismissed. It is so ordered.

Chairman ATKINSON, WOERNER and SHAW concur;
WIGHTMAN, *Commissioner*, dissents;
KENNISH, *Commissioner*, absent.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

Now, upon the evidence and after due deliberation,

It is ordered, 1. That the complaint in the above entitled case be, and the same is hereby, dismissed for the reasons stated in said report.

Ordered, 2. That this order shall take effect on August 10, 1914.

Dated August 3, 1914.

O. L. FULBRIGHT, MANAGER OF THE MANSFIELD AND AVA
TELEPHONE COMPANY AT NORWOOD, MISSOURI, v. NOR-
WOOD MUTUAL TELEPHONE COMPANY *et al.*

Case No. 389.

Decided August 3, 1914.

**Public Convenience and Necessity — Jurisdiction of Commission Over All
Companies "Hereafter Formed" Engaged in the "Business of
Affording Telephonic Communication for Hire."**

It appeared that the defendant, although professing to be a mutual telephone company, had furnished service to one person who was not a member of the company and also had exacted greater charges for service from certain subscribers than from others.

Held: That the defendant had been a purely mutual association, but that since April 15, 1913, the effective date of the Public Service Commission Law, in furnishing service to a non-member and in having charged

certain subscribers a higher rate than that charged to others, it had become a telephone corporation "hereafter formed" within the meaning of Section 96 of the Public Service Commission Law.

That the defendant should be required to discontinue rendering telephone service until it had procured a certificate of public convenience and necessity from the Commission unless it should show to the Commission on or before August 20, 1914, by affidavit, that it had admitted to the service of the company, on equal terms with all other members, those persons whom it had been charging a greater rate than that charged to the large majority of its subscribers, and also the person whom it had been serving although he was not a member of the company.*

OPINION.

I.

The complaint filed herein on May 8, 1914, in substance alleges that O. L. Fulbright is the manager of the Mansfield and Ava Telephone Company's exchange at Norwood, Missouri; that N. M. Ball, John Caudle and K. A. Kempt are farmers residing near Norwood and that Jesse Mallatt resides at Norwood. That said defendants did, on or about the sixth day of May, 1914, begin the construction and operation of a public telephone or switching station for hire at Norwood without obtaining a certificate of public convenience and necessity as required by law, and asking that said defendants be barred and prohibited from operating a telephone exchange at Norwood, and vicinity, and that defendants be ordered to suspend all operations until a hearing can be had and decision rendered in this case.

On May 15, 1914, an answer was filed by the Norwood Mutual Telephone Association, N. M. Ball, John Caudle, J. A. Kempt and Jesse D. Mallatt, stating that N. M. Ball, John Caudle, K. A. Kempt were directors and Jesse D. Mallatt, together with the above named directors and three hundred other persons, were partners as the Norwood Mutual Telephone Association, and denying the other allegations of the complaint, and further stating that the Norwood Mutual Telephone Association is composed of three hundred persons and that said persons on the — day of

* Editor's headnote.

———, 1907, organized the said Norwood Mutual Telephone Association and constructed a number of telephone lines in Wright and Douglas Counties for their sole use and benefit of the members of said association; that many of said lines run into Norwood; that on the — day of —, 1907, the said association contracted with the Mansfield and Ava Telephone Company to connect their said lines with the switchboard of the said last named company at Norwood, agreeing to pay said Mansfield and Ava Telephone Company 12½ cents per month per member for switching service and so continued until about the first of January, 1914, at which time the Mansfield and Ava Telephone Company notified defendants that the switching charge would be increased to 25 cents per member per month; that thereafter defendants purchased a switchboard and placed it in the home of Jesse D. Mallatt and employed him to attend to the same and do the switching of messages of the defendants and that the same is not used for hire.

II.

The testimony in this case was taken before a special examiner for the Commission at Norwood, Missouri, on the sixteenth day of June, 1914. It was established by the evidence that the Mansfield and Ava Telephone Company, hereinafter referred to as the Ava company, had been in operation at Norwood, Missouri, for about six years and also that the Ava company was engaged in furnishing telephone service for hire and had exchanges at Ava, Mansfield, Norwood and Denlow, and also had connection with long distance telephone service with the Bell Telephone system, and that a number of telephone lines had been extended into Norwood by parties residing in the country around Norwood and that for several years these rural lines had been connected with the switchboard of the Ava company at Norwood; that there were about thirty of these lines; the lines had been built separately by the persons desiring the service of such lines; the lines in each neighborhood were organized as a club, having a president and secretary; that

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all the lines were embraced in eight or ten clubs; that each person taking telephone service on said rural lines furnished and maintained his own telephone instrument; and the cost of constructing each line and keeping it in repair was assessed against those taking the service thereon; that the object of maintaining these rural telephone lines was for the purpose of furnishing telephone service to the patrons thereof that they could communicate with each other and with the business men at Norwood, which was the principal trading point of the patrons of these rural lines. That patrons of the rural lines permitted others to use their telephone service without charge.

That the Ava company had in use, in and about Norwood, about thirty telephones; that the patrons of the rural lines were furnished switching service by connection with the switchboard of the Ava company at Norwood and thereby could have telephone service through said switchboard with the subscribers to the service of the Ava company at Norwood and other points and also service over five private lines owned by individuals at Norwood, and also service over the long distance telephones with which the Ava company was connected on payment of the toll charges of the long distance company; that the Ava company charged each person having a telephone on the rural lines 12½ cents per month for furnishing switching service; that in the early part of this year the Ava company gave notice of its intention to increase this charge for switching service to 25 cents per month; that such increased rate became effective on the first day of March, 1914; that the patrons of the rural lines were organized as separate clubs, and some witness also claimed there was a working organization of all the subscribers to telephone service of the rural lines, and there is some testimony to the effect that they had attempted to adopt a constitution and by-laws and had several meetings of all the patrons to consider matters relating to telephone service.

That the patrons of a large number of the rural lines were dissatisfied with the proposed increased rate for

switching charges and thereafter the patrons of many of the rural lines decided they would not pay the increased rate for switching charges; that the representatives of the patrons of rural lines, who were dissatisfied, obtained a switchboard from Jesse Mallatt and caused it to be installed at Norwood; that on the sixth day of May, 1914, N. M. Ball, J. A. Kempt and John Caudle, defendants herein, and directors of the Norwood Mutual Telephone Association, notified O. L. Fulbright, manager of the Ava company, that they were going to start a switchboard that evening and that Jesse Mallatt was one of them; the Mutual company, so-called, did not extend any new lines into Norwood, but took such of the old lines as were dissatisfied with the switching rate from the Ava company's switchboard and extending them from the north side of the railroad over to where the new switchboard was located on the south side of the railroad; that the new switchboard was connected with several lines extending from the switchboard to stores and other places in the town of Norwood; that the poles upon which the lines of the Mutual company were maintained were quite generally situate in the public highway; that Norwood has not been incorporated as a city, town or village; that Jesse Mallatt used the rural lines in connection with the Mountain Grove toll line to talk to a person at Mountain Grove; that the toll charge would be 10 cents to the Mountain Grove company, but he had not paid it and Mallatt offered to furnish telephone service from Norwood over the rural line to the Mountain Grove line, but could not get a reply from the Mountain Grove line at the time for Mr. Johnson.

O. L. Fulbright used the rural line on four different occasions and each time gave 10 cents to the person whose telephone was used. The payment was voluntary and was not required by the rural line for the use of the telephone service furnished.

The new switchboard was operated by Jesse Mallatt for the rural lines and that each of the patrons of the rural lines, both in town and in the country, was to pay said Mallatt 12½ cents per month for switching service.

Jesse Mallatt made an agreement with Dr. Ryan to the effect that when Dr. Ryan built a telephone line to the new switchboard and purchased his own telephone that Dr. Ryan would be furnished service for the rural lines for 25 cents per month for a telephone at his office and 12½ cents per month for his residence 'phone. Dr. Ryan did so connect with the new switchboard telephone at his office and residence and was receiving the service from the rural lines and without making any agreement to become a member of the Mutual Telephone company, but had not paid anything to the Mutual company.

A. E. Donaldson had a telephone at Norwood connected with the switchboard of the rural lines and paid 25 cents a month for service; he was a member of the Mutual company. He had talked from Norwood over the lines of the Mutual company to Mountain Grove and to do so was necessary to use a part of the Mountain Grove line which was a toll line; that nothing had been collected for the service to Mountain Grove.

III.

Complainant contends that defendants are a telephone corporation for hire within the meaning of these terms as used in Section 96, Public Service Commission Law.

The terms "telephone corporation" and "telephone line" are defined by Sub-sections 17 and 18 of Section 2, Public Service Commission Law.

Prior to the increase in switching charges, the farmers' lines were not operated for hire under the evidence in this case as above set forth. Complainant offered evidence to show that messages had been sent over the lines of the defendants to Mountain Grove which made it necessary to pay a toll fee to the Mountain Grove company, but as no charge was made for transmission over the defendant's line, the sending of such a message was not the use of the defendant's line in the conduct of the business of affording telephonic communication for hire within the meaning of Sub-section 17 of Section 2, Public Service Commission Law.

Defendant's line received no part of the toll charge and its lines are devoted to the use of the subscribers for mutual telephone service at the cost of the service only to be paid by the subscribers thereto without any purpose to afford telephone service to the public for profit.

See case of *Galloway v. Yarnall** (not yet reported).

The case of *Hume Telephone Company v. Liggett*† is not in conflict with the foregoing.

IV.

Defendants, however, are furnishing telephone service to Dr. Ryan, who is not a member of the Mutual company, for 25 cents per month for a telephone at his office and 12½ cents for a telephone at his residence, and furnishing service to Mr. Donaldson for 25 cents per month, while other members are charged 12½ cents to cover the switching service rendered by Mallatt.

In the particulars above named, defendants are engaged in furnishing telephone service for hire because they are exacting a charge from Donaldson and Dr. Ryan of 25 cents per month while the other members of the company only pay 12½ cents per month and are furnishing Dr. Ryan service when he is not a member of the Mutual company.

Defendants were a purely mutual association prior to the installation of their own switchboard at Norwood, and since April 15, 1913, have, in furnishing said service to Dr. Ryan and Donaldson, become a telephone corporation hereafter formed within the meaning of Section 96 of Public Service Commission Law, and defendants should be required to discontinue rendering telephone service until they have procured a certificate of public convenience and necessity from the Commission, as provided by Section 96, Public Service Commission Law, unless defendants, on or before August 20, 1914, by affidavit show to this Commission that they have admitted Dr. Ryan and Mr. Donaldson

* Printed in this Leaflet, at page 1058.— Ed.

† Printed in Commission Leaflet No. 32, at page 422.— Ed.

to service of the Mutual company on equal terms with all the other members.

It is so ordered.

All concur, except KENNISH, *Commissioner*, absent.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

Now, after due deliberation,

It is ordered, 1. That defendants herein be, and they are hereby, required to discontinue the rendering of telephone service for hire to Dr. R. A. Ryan or Mr. A. E. Donaldson, or any other person, corporation, or firm, until said defendants have procured a certificate of public convenience and necessity from this Commission authorizing them so to render such service for hire, as provided by Section 96 of the Public Service Commission Law; *provided*, however, that if defendants, on or before August 20, 1914, show to this Commission by affidavit that they have admitted said Dr. Ryan and Mr. Donaldson to service of the Norwood Mutual Telephone Company on equal terms with all the other members thereof, said defendants may continue the telephone service as now rendered to said parties.

Ordered, 2. That this order shall take effect on the tenth day of August, 1914.*

* The matter of the operation of the switchboard here in question was before the Commission in the case of *R. L. Plummer v. Jesse D. Mallatt*, Case No. 333, decided August 3, 1914, in which case the complaint was dismissed without prejudice because of lack of evidence that the defendant was engaged, prior to the date of the filing of the complaint, March 28, 1914, in the business of furnishing telephonic communication for hire.—ED.

A. L. GALLOWAY v. T. B. YARNALL AND GEORGE BAYLESS.

Case No. 390.

*Decided August 3, 1914.**

**Commission without Jurisdiction over a Strictly Mutual Telephone Company
Not Engaged in Telephonic Communication for Hire.**

OPINION.

I.

This case being at issue upon complaint and answer, the evidence was heard before a special examiner for the Commission at Cassville, Missouri, on the eighteenth day of June, 1914.

The question to be determined is whether or not defendants, as a telephone corporation within the meaning of Section 96, Public Service Commission Law, have commenced construction of a telephone line and competing telephone exchange in the city of Cassville and vicinity in this State, without first having obtained from the Public Service Commission permission to begin construction and a certificate of public convenience and necessity as required by Section 96 aforesaid.

Defendants contend that they are not subject to the jurisdiction of the Commission because defendants and their associates are a mutual telephone company and own and operate a telephone system for mutual advantage of the subscribers, and are not engaged in furnishing telephone service for hire, and, therefore, are not a telephone corporation within the meaning of Section 96, Public Service Commission Law.

II.

There is little dispute about the facts.

The Cassville Telephone and Electrical Company, of which company, complainant is the president, owns and operates a telephone exchange in the city of Cassville. For several years prior to May 1, 1914, a number of farm

*A motion for a rehearing denied August 31, 1914. — ED.

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or rural telephone lines extended into Cassville and connected with the switchboard of the Cassville company, and paid to the Cassville company 10 cents per month for a switching charge for each telephone on the rural lines. There were twenty of these rural lines and each line had selected officers. The persons having a telephone on the rural lines had paid for the lines and each owned his own telephone, and there was no charge for telephone service. In all, there were about two hundred and sixty telephones on the rural lines. The Cassville company, on May 1, 1914, raised the switchboard charge from 10 cents per month to 25 cents per month for each person having a telephone on the rural lines. Thereupon, nineteen of the rural lines disconnected their lines from the switchboard of the Cassville company and installed a switchboard at Cassville, and connected their lines with it, and the said switchboard was connected with the two telephones in Cassville. On the eleventh day of May, 1914, the board of aldermen of Cassville (a city of the fourth class) granted a franchise to the defendants under the name of The Farmers Independent Co-operative Telephone Company to construct and maintain a telephone system in said city. Defendants and their associates now style themselves the Farmers Mutual Company, and have applied to the city of Cassville for a franchise under that name.

The telephone system of the defendants and their associates connects with the switchboard of a telephone company at Exeter and through messages may be sent over the long distance Bell system, either from a patron's telephone on the rural lines, or by any person connected with the long distance and thence to a patron of the rural lines upon payment of the toll charges on the long distance line. The rural or mutual line charged nothing for transmission of long distance messages, and the so-called Farmers Mutual Company made no charge for telephone service as each patron owned his own telephone and repairs and cost of maintaining the lines and switchboard were paid by an assessment upon all the members. Each person having a

telephone became a member, and it was customary to permit others than members to use the telephone service on the mutual lines.

III.

Complainant contends that defendants are a "telephone corporation for hire," and subject to the jurisdiction of the Commission: (1) Because the rural line connects with the long distance and although no charge is made for the use of the rural line in transmitting a message over it and the toll line, yet it is a part of a telephone line affording telephonic communication for hire, and that therefore defendants are a "telephone corporation."

This Commission has jurisdiction over all telephone corporations, as those terms are defined in Sub-section 17 of Section 2, Public Service Commission Law, and which is as follows:

"The term 'telephone corporation' when used in this act, includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire."

A "telephone line" is defined by Sub-section 18, Section 2, Public Service Commission Law, as including "conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telephone corporation to facilitate the business of affording telephonic communication."

The defendants and their associates, when using their line in connection with the switchboard of the long distance telephone at Exeter, do not use their line in the conduct of "the business of affording telephonic communication for hire." There is no charge made for the transmission of the message over any part of the rural line. The line of the defendants is not devoted to a public use for hire, but to

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the mutual accommodation of the owners thereof. Hence, the transmission of a message from the rural line to the toll, or from the toll line to the rural line, where the rural line receives no part of the toll charge, does not constitute the defendants and their associates a "telephone corporation" within the meaning of the Public Service Commission Law, and the contention is ruled against complainant. The case of *Hume Telephone Company v. Liggett*,* decided May 25, 1914 (not yet reported), is not in conflict with the above.

IV.

Complainant contends that because defendants have accepted a franchise from the city of Cassville to use its streets to construct and maintain a telephone system and have constructed and maintained telephone lines therein and on the public highways of the county, that defendants have devoted their property to public use and must be held to be using the streets and roads for public purposes or else are wrongfully occupying said streets and roads with their poles and wires.

It is not necessary to determine in this proceeding whether defendants are wrongfully occupying the streets and roads in question. When it has been determined, as hereinabove, that defendants are not engaged in owning or operating, controlling or managing, any telephone line or part of a telephone line used in the conduct of the business of affording telephonic communication for hire, the jurisdiction of this Commission over this case has ended and the rightful or wrongful use of the streets and roads is wholly outside the case.

V.

Defendants and their associates are not a "telephone corporation" within the meaning of Section 96, Public Service Commission Law, and were, therefore, not required to apply to this Commission for permission to begin con-

* Printed in Commission Leaflet No. 32, at page 422.— Ed.

struction and for a certificate of public convenience and necessity.

The complaint should be dismissed. It is so ordered.

All concur, except KENNISH, *Commissioner*, absent.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

Now, upon the evidence and after due deliberation,

It is ordered, 1. That the complaint in the above entitled case be and the same is hereby dismissed for the reasons stated in said report.

Ordered, 2. That this order shall take effect on August 10, 1914.

Dated at Jefferson City, Missouri, this third day of August, 1914.*

* The Commission arrived at a similar conclusion and issued a similar order in the case of *Sheldon Mutual Telephone Company v. Farmers' Mutual Telephone Association and E. E. Riggs, President*, Case No. 328 August 3, 1914.—ED.

NEBRASKA.

State Railway Commission.

LAWRENCE TELEPHONE COMPANY *v.* LINCOLN TELEPHONE
AND TELEGRAPH COMPANY.

Formal Complaint No. 236.

Decided July 13, 1914.

Routing of Toll Messages — Division of Toll Revenue.

This was a dispute between the Lawrence Telephone Company and the Lincoln Telephone and Telegraph Company as to the routing of toll messages between Lawrence and Hastings and the division of charges for such messages.

Held: That the Lawrence Telephone Company should be given the privilege of routing all messages originating on its lines at Lawrence to Hastings *via* Pauline, and that the division of the toll charges should be made on a 50 per cent. basis between the complainant and the defendant;

That the Lincoln Telephone and Telegraph Company should have the privilege of routing all business originating on its exchange at Hastings, destined to Lawrence, *via* Blue Hill, and that the Lawrence Telephone Company should receive 10 per cent. commission on all messages received over the Lincoln Telephone and Telegraph Company's lines from Hastings to Lawrence, and 15 per cent. on all messages originating on the Lawrence exchange destined to Hastings *via* Blue Hill.

An order in accordance with the above holdings of the Commission was entered.*

APPEARANCES:

Henry Gillsdorf, president, for complainant.

John Morehead, manager, for complainant.

L. E. Hurts, for defendant.

R. E. Mattison, for defendant.

HALL, Commissioner:

The petition herein was filed on April 9, 1914, in which the complainants complain of the defendant, and allege that said defendant has refused to further recognize an agreement affecting the routing of toll messages between Law-

* Editor's headnote.

rence and Hastings *via* Pauline, Nebraska, and the prorating of the toll charges therefor, and further have refused entirely to accept messages from Lawrence, Nebraska, to Hastings, Nebraska, *via* Pauline, Nebraska.

During the year 1904 the Lawrence Telephone Company built a telephone line from Lawrence to Pauline, Nebraska, and installed a booth there. They then took messages there and delivered them to the Nebraska Telephone Company at Lawrence, Nebraska, where they then were connected with the lines of the said Nebraska Telephone Company. About the end of the year 1904 the Nebraska Telephone Company made an agreement with the Lawrence Telephone Company to build a line from Hastings to Pauline, installed 'phones in Pauline and for farmers north of Pauline. That the said Nebraska Telephone Company would maintain a switchboard at Pauline and do the switching for the Lawrence Telephone Company's subscribers on lines running into their switchboard at 25 cents per month including Hastings service. The toll messages between Lawrence and Hastings were to be handled *via* Pauline and the tolls should be prorated by both companies on the basis of 50 per cent. to each company, the distance from Hastings to Pauline being practically the same as the distance from Pauline to Lawrence. The Lawrence Telephone Company agreed to remove their booth from Pauline and to not build any lines north of Pauline and to not install any 'phones in the village of Pauline. It was further agreed that they might install farm 'phones south of Pauline and run lines into the Nebraska Telephone Company's switchboard at Pauline.

The Lincoln Telephone and Telegraph Company purchased the exchange and all lines of the Nebraska Telephone Company at Hastings, including the line above referred to running from Hastings to Pauline. The Lincoln Telephone and Telegraph Company also owns and operates a toll line from Hastings to Lawrence *via* Blue Hill. The distance from Hastings to Lawrence *via* Blue Hill being practically the same as that from Hastings to Lawrence *via* Pauline. Considering both lines from Hastings to Lawrence for toll purposes, we find that the Lincoln Telephone

and Telegraph Company owns three-fourths of the lines on a mileage basis; *i. e.*, the Lincoln Telephone and Telegraph Company owns the entire toll line to Lawrence *via* Blue Hill and one-half the line to Lawrence *via* Pauline.

The Commission having held several conferences in the matter and being fully advised in the premises, is of the opinion that the Lawrence Telephone Company should have the privilege of routing all messages originating on its lines at Lawrence to Hastings *via* Pauline and that the division of the toll charges should be made on a 50 per cent. basis between the complainant and the defendant herein. The Commission is further of the opinion, however, that the Lincoln Telephone and Telegraph Company should have the privilege of routing all business originating on its exchange at Hastings, Nebraska, destined to Lawrence, *via* Blue Hill and that the Lawrence Telephone Company should receive 10 per cent. commission on all of the messages received over the Lincoln Telephone and Telegraph lines from Hastings to Lawrence and that they should receive on all messages originating on the Lawrence exchange destined to Hastings, Nebraska, *via* Blue Hill 15 per cent. of said charges.

It is, therefore, ordered, By the Nebraska State Railway Commission that the Lawrence Telephone Company may route all the business originating on the Lawrence exchange destined to Hastings, Nebraska, via Pauline and that all toll charges shall be divided on a 50 per cent. basis between Lawrence Telephone Company and Lincoln Telephone and Telegraph Company, and that the Lincoln Telephone and Telegraph Company may route all messages originating on its Hastings exchange destined to Lawrence via Blue Hill and that the Lawrence Telephone Company shall receive 10 per cent. on all such messages received by them. It is further ordered that the Lawrence Telephone Company shall receive 15 per cent. on all messages originating on its Lawrence exchange destined to Hastings, Nebraska, routed via Blue Hill.

Made and entered at Lincoln, Nebraska, this thirteenth day of July, 1914.

IN THE MATTER OF THE APPLICATION OF THE TRI-COUNTY
TELEPHONE COMPANY OF STAPLETON, FOR AUTHORITY TO
INCREASE ITS SWITCHING RATE ON LINE "N."

Application No. 2173.

Granted July 20, 1914.

Increase in Switching Rate Granted.

ORDER.

WHEREAS, the Tri-County Telephone Company of Stapleton has made application to the Nebraska State Railway Commission for authority to increase its switching rate, applicable to patrons on line "N," from \$5.00 to \$10.00 per year, the company to maintain "side lines," which it has not been doing under the old rate;

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted, by existing conditions:

It is ordered, By the Nebraska State Railway Commission that the desired authority be, and the same is, hereby granted, the new rate as above authorized to become effective from and after August 1, 1914.

Made and entered at Lincoln, Nebraska, this twentieth day of July, 1914.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO INSTALL SPECIAL TEN-PARTY LINES INTO TRUMBULL AND DONIPHAN, AND ESTABLISHING RATES FOR SERVICE.

Application No. 2176.

Dated July 23, 1914.

Installation of Ten-party Lines Approved — Rates for Such Service Established.

ORDER.

WHEREAS, the Lincoln Telephone and Telegraph Company has made application to the Nebraska State Railway

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Commission for authority to install a special ten-party line into Trumbull and another similar line into Doniphan, these lines to be connected to the Hastings exchange, or one of the exchanges in the Hastings zone, and to receive free service with Hastings, the rate to be \$3.25 per month gross and \$3.00 per month net.

And it appearing to the Commission upon due investigation and consideration that the application is reasonable and warranted by existing conditions.

It is ordered, By the Nebraska State Railway Commission that the desired authority be and the same is hereby granted, the service and rates as above authorized to become effective as of this date, an emergency existing.

Made and entered at Lincoln, Nebraska, this twenty-third day of July, 1914.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORITY TO REDUCE THE TOLL RATE BETWEEN ASHLAND AND WAHOO.

Application No. 2184.

Decided July 29, 1914.

Reduction in Toll Rates at Request of Company.

EXCERPT FROM THE MINUTES OF THE COMMISSION.

"Application having been made by the Lincoln Telephone and Telegraph Company for authority to reduce its toll rate for three minute service between Ashland and Wahoo from 20 cents to 10 cents, and it appearing to the Commission, upon investigation and consideration, that the application is reasonable and warranted by existing conditions, the desired authority was granted, effective August 1, 1914, and it was directed that applicant be notified by letter of the action taken."

NEW MEXICO.

State Corporation Commission.

IN THE MATTER OF TELEPHONING MESSAGES FROM SILVER CITY
TO COONEY.

Informal Complaint No. 208.

Decided August 11, 1914.

**Elimination of Discrimination in Rates — Substitution of Measured Service
for Flat Rate Charges — Elimination of Free Service — Revision
of Toll Charges — Minimum Charge per Month for Toll
Service — Payment to Subscriber of Commission
on Toll Messages.**

RECOMMENDATIONS BY THE COMMISSION.*

Complaints have been made to this Commission by numerous parties of the unsatisfactory service and excessive charges on lines of telephone operated by you between Silver City, Mogollon and Cooney; and inasmuch as the same conditions exist on your lines operated between Silver City, Santa Rita, Hurley and Tyrone, the Commission has made an investigation and inquiries with reference to these matters, and find that the Grant County Telephone Company, the predecessor of The Mountain States Telephone and Telegraph Company, constructed and operated the exchange at Silver City, with various exchange and toll lines, and had no particular standard of making rental rates or computing toll rates upon the telephone line between Silver City, Mogollon and Cooney, and provided what is known as an "other line" rate upon the basis of 50 cents for one-minute conversation, 75 cents for two-minute conversation, 85 cents for three-minute conversation, and \$1.00 for four-minute conversation.

* Recommendations contained in a letter of the Commission, dated August 11, 1914, addressed to The Mountain States Telephone and Telegraph Company.— Ed.

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There was also provided what is known as flat rate service to various subscribers, this flat rate service allowing as many calls as were required to pass over this telephone line from various points between Silver City, Mogollon and Cooney at the flat rental rate of \$7.50 and \$10.00 per month.

It was also found that the Grant County Telephone Company entered into various contracts for handling telegrams from Silver City to Mogollon and Cooney. Contracts were not entered into with all of the subscribers upon this telephone line, but the contracts that were entered into provided that the parties entering into the agreement would be allowed to receive and send telegrams at a reduced rate of 25 cents, but others not having entered into a contract had to pay the standard published rates as above named.

It was also found that the Grant County Telephone Company, under a contract with the United States Government, were furnished a certain amount of material to originally construct the telephone line jointly with the United States Government from Silver City to Mogollon and Cooney, and that the Grant County Telephone Company constructed a certain part of this line from its own resources, and, as a consideration, the Grant County Telephone Company was to place as many telephones as it saw fit upon this telephone line, and to charge whatever rate it might desire, collect and appropriate to their own use all revenue derived therefrom, to operate and maintain the line, provide free telephone service for all United States Forest Service Stations, but the title to the said telephone line to be always vested with the United States Government.

It was also found that the Grant County Telephone Company constructed and operated exchange and toll lines from Silver City to Tyrone, Hurley and Santa Rita, all within the State of New Mexico, and that by reason of not having any fixed standard of making exchange rental rates and computing toll rates, provided an "other line" rate from Silver City to all these points.

This investigation and inquiry revealed the fact that The Mountain States Telephone and Telegraph Company has not since the purchase of the Grant County Telephone Company property eliminated all of these irregularities herein mentioned, and that the same conditions of discrimination still continue to exist.

The telephone line from Silver City to Mogollon and Cooney, which is approximately eighty-five miles in length, has located thereon some twenty-six subscribers, not taking into account the government telephones in use by the Forest Service, some of these subscribers paying a flat rate of \$7.50 and some paying \$10.00 per month, these telephones being free to friends and other parties desiring to use the same with the permission of the subscriber.

It is the conclusions of this Commission that as a result of the flat rate service this telephone line is more or less overloaded to such an extent that good telephone service cannot be provided to all, and that by reason of the charges as now fixed there is material discrimination as between subscribers for the same service.

It is also our opinion that the "other line" toll rate of 50 cents for one-minute conversation, 75 cents for two-minute conversation, 85 cents for three-minute conversation, and \$1.00 for four minutes conversation, is excessive and unreasonable, and is not in keeping and in accord with the toll rates adopted as standard now filed with this Commission by The Mountain States Telephone and Telegraph Company.

We are also inclined to the belief that the flat rates of \$7.50 per month and \$10.00 per month made to different subscribers, without regard to distance, is discriminatory and unreasonable. We have gone into this matter quite thoroughly and believe that the best and only solution of the controversy would be to adopt the zone principle of rates, which has been placed in effect on most of your lines in New Mexico, which rates are reflected by the schedule presented by your Mr. Clark in conference with this Commission under even date herewith, thus avoiding unnecessary con-

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versations by telephone, which the flat rate system encourages, and would enable patrons of the line who have a volume of business, to transact the same without interference by such unnecessary conversations; and in order to avoid the overloading of the line, we are inclined to think that all subscribers on this line should be required under contract to guarantee to your telephone company a reasonable return in toll service for installation of such 'phone station, and considering the welfare and convenience of those who have to transact business by telephone between Silver City, Mogollon and Cooney, it is deemed not only just and equitable to all concerned but also necessary to promote a satisfactory service, to require certain changes to be made.

We would, therefore, recommend, That The Mountain States Telephone and Telegraph Company proceed at once to eliminate all discrimination existing upon the telephone line from Silver City to Mogollon and Cooney; Silver City to Santa Rita; Silver City to Hurley; and Silver City to Tyrone, by placing in effect on these lines a standard or measured toll service providing for a three-minute minimum charge, and as covered by the present air line method and schedules for toll service now filed with this Commission for lines in other portions of the State.

That all flat rate telephone charges upon the line between Silver City, Mogollon and Cooney should be eliminated, and all its subscribers placed upon the measured service or toll paying basis.

That each subscriber thereon shall be required to enter into a contract with The Mountain States Telephone and Telegraph Company guaranteeing an amount of \$10.00 per month as originating toll business from their telephone station, this guarantee to be made up by the charge on each call, which shall be made at the regular measured toll rate, and in case in any one month the regular toll business from such station is not sufficient to make the \$10.00 guarantee, the subscriber will be required to make up the difference; and the telephone company will pay to each such subscriber

a commission of 15 per cent. with a maximum of 15 cents on each message on all business originating at such telephone station.

All free service now existent on this line should be eliminated, and no free service whatever should be provided to anyone except those in the employ of the government at the government telephone stations.

We believe if these recommendations are placed in effect by your company it will be the means of eliminating complaints on account of discrimination and excessive charges by the patrons of that line, and would suggest that your company comply with same at as early a date as possible so to do.

We would also suggest that your company send some reliable person to the subscribers and patrons on this line, informing them of the changes to be made in the service and rates, so that there may be no question with the subscribers and patrons over the changes so made.

We would be glad to be advised by you when such changes are made effective over the lines in question.

IN THE MATTER OF PHYSICAL CONNECTION AT AZTEC AND
FARMINGTON.

Informal Complaint No. 301.

Dated August 11, 1914.

**Reduction in Exchange Service Fee and Revision of Certain Toll Charges
Recommended — Substitution of Toll Service for Free
Service Formerly Existing between Exchanges.**

RECOMMENDATIONS BY THE COMMISSION.*

Confirming our conversation of to-day with reference to Informal Complaint No. 301 of the Aztec and Farmington citizens on telephone matters:

* Recommendations contained in a letter of the Commission, dated August 11, 1914, addressed to The Mountain States Telephone and Telegraph Company.— Ed.

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We have to recommend, in line therewith, that your company proceed at once to adjust this matter by reducing your exchange service fee to all mutual lines operated through the Aztec and Farmington exchanges to a basis of 50 cents per month per 'phone where the lines are maintained by the owners; and,

We have further to recommend that your company revise the toll charge between the Aztec and Farmington exchanges to a basis of 10 cents for number call and 15 cents for party call.

We have further to recommend that all free service between exchanges of Aztec and Farmington, and vice versa, be discontinued. We are convinced, after investigation of this matter, that this is the most reasonable basis that can be arrived at at this time, in view of the conditions that exist at those places.

We would further recommend that your operators at the Aztec and Farmington exchanges be instructed to give to the patrons of those exchanges the best and most expeditious service possible to do.

These recommendations are in no wise to be interpreted or construed as a precedent to be established in other communities or on other lines operating in this State, but are simply to meet the exigencies at the points in question.

NEW YORK.

Public Service Commission — Second District.

IN THE MATTER OF THE COMPLAINT OF RESIDENTS OF THE
VILLAGE OF DEXTER *v.* JEFFERSON COUNTY TELEPHONE
COMPANY AND NEW YORK TELEPHONE COMPANY.

Case No. 2205.

*Decided July 21, 1914.**

Reduction of Mileage Charges Ordered.

Upon complaint that the rates for individual line, two-party and four-party line service including both Watertown and Dexter were excessive, it appeared that prior to the merger of the Jefferson County Telephone Company with the New York Telephone Company, the former had furnished Watertown and Dexter service at a flat rate, whereas the New York company had given Watertown service at a flat rate, but for service including both Watertown and Dexter had made a mileage charge in addition to the Watertown exchange rate. Subsequently to the merger, the New York company charged for the Watertown-Dexter service the Watertown rate for the class of service taken plus a mileage charge based upon a distance of $5\frac{3}{4}$ miles. The mileage charge per quarter mile was \$6.00 for an individual line, \$3.50 for each station on a two-party line and \$2.00 for each station on a four-party line.

It further appeared that a local company operated at Dexter furnishing service there at a flat rate, and also, through an agreement with the New York company, furnished service to Watertown at the rate of 5 cents per message, which service was not satisfactory to the complainants.

Held: That the mileage charges were excessive and operated in connection with the base rate to produce total charges much greater than were justified by the value of the service to the subscribers.

Ordered, That the mileage charges per quarter mile shall not exceed \$3.00 for individual line service, and \$2.00 for two-party or four-party line service; and that the mileage rate for multi-party or rural lines to subscribers in the Dexter exchange area covering both Watertown and Dexter shall not exceed its present mileage rate for such service.

*An application for a rehearing has been filed by the New York Telephone Company.— Ed.

Schedule of Mileage Rates for Brownville Recommended.

The Commission recommended the establishment of the following mileage charges per quarter mile between Watertown and Brownville:

- \$3.00 for individual line service;
- 2.00 for two-party line service, and
- 1.50 for four-party line service.

and between Brownville and Dexter:

- \$3.00 for individual line service;
- 2.00 for two-party or four-party line service.

The Commission also recommended that no mileage charge should be made on rural lines.*

OPINION AND ORDER.

DECKER, Commissioner:

Complainants, residents of Dexter, allege that the New York Telephone Company† formerly quoted flat rates for service at Dexter, including the Watertown exchange, that is to say, a subscriber in Dexter could talk under a flat rate with any subscriber in Watertown; that the respondent later imposed an excessive mileage rate for individual line, and two-party and four-party line service to subscribers situated in Dexter; that the present rates are unreasonable, and the complainants ask that a fair and reasonable mileage rate be charged for these services.

Dexter is an incorporated village with about 1,000 inhabitants and is situated approximately seven miles westerly from Watertown. Prior to March, 1911, there were two telephone systems operating in Watertown and Dexter, namely, the New York Telephone Company and Jefferson County Telephone Company. On March 3, 1911, the Jefferson County company was merged by the New York company. Prior to the merger the complainants were subscribers of the Jefferson County company under a rate which included both Dexter and Watertown service. These rates were as follows:

* Editor's headnote.

† Jefferson County Telephone Company?— Ed.

	<i>Business</i>	<i>Residence</i>
Direct	\$36 00	\$24 00
Two-party . . . . .	.....	.....
Four-party	30 00	18 00
Rural	18 00	18 00

The New York Telephone Company's schedule for the Watertown exchange alone was as follows:

	<i>Business</i>	<i>Residence</i>
Direct	\$48 00	\$30 00
Two-party	39 00	24 00
Four-party (800 messages)	30 00	18 00
Rural	24 00	18 00

For service including Watertown and Dexter an additional mileage charge was made against the Dexter subscriber.

Since the merger a small local telephone company, not under the jurisdiction of the Commission, has begun operation in the village of Dexter and vicinity, and it quotes a \$15.00 rate for its local service with a 5 cent toll charge to Watertown through a connection agreement with the New York Telephone Company. This local company serves some 80 subscribers in Dexter and vicinity, but the complainants claim that its service is inadequate for their purposes and contend that they must have the direct Watertown service. Most of the eight complainants in this case are upon a circuit serving eleven subscribers and are paying a base rate of \$24.00 plus a mileage charge of \$2.00 per quarter mile beyond the Watertown exchange which makes the total rate from \$40.00 to \$44.00 for this multi-party or rural service. They accept this poorer grade of service because the present mileage rates are deemed by them to be too high. The complainants are engaged in business in Dexter and use this service for their business purposes. The base rates and mileage for the various kinds of service to the Dexter subscribers including the use of the Watertown exchange are as follows:

	<i>Business</i>			<i>Residence</i>		
	<i>Base rate</i>	<i>Mileage</i>	<i>Total</i>	<i>Base rate</i>	<i>Mileage</i>	<i>Total</i>
Direct.....	\$48 00	\$138 00	\$186 00	\$30 00	\$138 00	\$168 00
Two-party.....	39 00	80 50	119 50	24 00	80 50	104 50
Four-party.....	30 00	46 00	76 00	18 00	46 00	64 00
Rural.....	24 00	16 00	40 00	18 00	16 00	34 00

This table shows the application of the company's mileage charges according to its tariff basis as follows:

"A. Exchange Line Mileage.

1. Individual, two-party and four, or four-plus-party line service.

	<i>Rates per annum per ¼ mile or fraction thereof</i>
Schedule No. 1:	
Individual line or private branch exchange trunk.....	\$6 00
Two-party line, per station.....	3 50
Four-party line, per station, or multi-party line per station if the rate for multi-party is less than the rural line rate applying in the same district.....	2 00

Route measurements are used in determining the mileage charges beyond the base rate area specified for the particular central office district."

These mileage charges apply where special construction is required to reach individual subscribers by separate line. The same charges are also applied in this case where a number of subscribers may be served from the same pole route or routes. The telephone company contends that the mileage charges are the same as it charges elsewhere and that any variation from the established tariff would result in disruption of its entire schedule. Therefore that the charges should not be changed for the convenience of a few subscribers who happen to be so situated that they desire a special service which involves this mileage charge. Evidence has not been presented by the telephone company in this case to establish the cost to it as a basis for fixing the above stated mileage charges. They must be determined,

therefore, mainly upon consideration of the general relation of the rate schedules and the area served and the demand for the service.

There are some 32 subscribers in Brownville, 4 between Brownville and Dexter and 9 in Dexter. These subscribers are served by two pole lines, respectively north and south of the Black River. These lines carry wires as follows:

Watertown-Clayton Line (south of the Black River)

Watertown-Brownville Junction —

Capacity	40 wires
Present load	38-48 wires

Brownville Junction-Dexter —

Capacity	20 wires
Present load	26-30 wires

Watertown-Dexter Line (north of the Black River)

Watertown to eastern corporation limits of Brownville —

Capacity	30 wires
Present load	12-20 wires

Since these pole lines are so greatly loaded it is evident that these facilities must be maintained in any event and that there is an economy to the telephone company in the combined use of the routes for a considerable number of subscribers. It is quite evident that complainants should receive the benefits from these conditions. The telephone company's tariff which states the mileage above mentioned also provides as follows:

"Departures from the standard schedules are found necessary in some instances in order to conform to municipal or natural boundaries. In outlying sections when the real estate development is in the nature of a colony having a community of interests it is also found advisable to apply an average charge throughout such colony in order to avoid a variety of charges which would result from the strict application of the standard schedule."

This clause in the tariff seems fairly to apply in this case and meets the objection advanced by the company that a

variation between established mileage charges would disrupt the entire schedule.

We are of the opinion that the mileage charges as shown in the foregoing rate table are excessive and operate in connection with the base rate to produce total charges much greater than are justified by the value of the service to the subscribers. Instead of a mileage charge per quarter mile or fraction thereof, of \$6.00 for individual line or private branch exchange trunk and \$3.50 for two-party line, these mileages should be reduced, as having reference to the particular case under consideration, to \$3.00 for the direct or individual line and \$2.00 for the two-party or four-party line. This would produce rates for the Dexter subscribers as follows:

	<i>Business</i>			<i>Residence</i>		
	<i>Base rate</i>	<i>Mileage</i>	<i>Total</i>	<i>Base rate</i>	<i>Mileage</i>	<i>Total</i>
Direct	\$48 00	\$69 00	\$117 00	\$30 00	\$69 00	\$99 00
Two-party	39 00	46 00	85 00	24 00	46 00	70 00
Four-party	30 00	46 00	76 00	18 00	46 00	64 00
Rural	24 00	16 00	40 00	18 00	16 00	34 00

If the New York Telephone Company were operating locally in Dexter and to any extent we should feel that these mileage rates should be still further reduced or that flat rates should be prescribed to take in both the Dexter and the Watertown service, but the company mainly operating in Dexter is the local company above referred to and which has a practical monopoly of the local business in Dexter and vicinity.

The present case does not include the rates for Brownville nor rates applicable to the district between the boundary of Brownville and the boundary of the village of Dexter, but those rates have been made the subject of testimony and presentation in this case because connected generally with the Dexter complaint as rates for related service. It is recommended to the company that the following rates be adopted for Brownville:

	Business			Residence		
	Base rate	Mileage	Total	Base rate	Mileage	Total
Direct.....	\$48 00	\$30 00	\$78 00	\$30 00	\$30 00	\$60 00
Two-party.....	39 00	20 00	59 00	24 00	20 00	44 00
Four-party.....	30 00	15 00	45 00	18 00	15 00	33 00
Rural.....	24 00	.....	24 00	18 00	.....	18 00

The basis of these rates as affecting the mileage charge applicable along the routes between Watertown, Brownville and Dexter, outside the base rate area of Watertown, and using air line measurements is as follows:

A. From Watertown city limits to Brownville —

Direct line \$3.00 per annum per $\frac{1}{4}$ mile.

Two-party line \$2.00 per annum per $\frac{1}{4}$ mile.

Four-party line \$1.50 per annum per $\frac{1}{4}$ mile.

B. From Brownville to Dexter —

Direct line \$3.00 per annum per $\frac{1}{4}$ mile.

Two and four-party line \$2.00 per annum per $\frac{1}{4}$ mile.

The variation for the four-party line is made lower as between Watertown city limits and Brownville because of the probable greater line service between those points than between Brownville and Dexter. For the same reason we have left off for the Brownville rate the addition of mileage to the rural base rate. Order will be entered directing that the company shall not charge to exceed the rates above specified for Dexter subscribers who desire to avail themselves of the use at flat rates of the Watertown exchange.

ORDER.

For the reasons stated in the opinion by Commissioner Decker this day adopted and filed with the case,

Ordered, 1. That respondent, New York Telephone Company be, and is hereby notified and required to cease and desist on or before August 31, 1914, from charging its present mileage rates for direct line and two-party and

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four-party line service in addition to the base rates to subscribers in the Dexter exchange area who desire service including both the Watertown and Dexter exchange areas, which said rates are hereby determined by the Commission to be unreasonable and unjust, and on and after that date to charge and collect mileage rates for such service per quarter mile not exceeding \$3.00 for individual line or private branch exchange trunk service and not exceeding \$2.00 for two-party and four-party line service, and that its mileage rate for multi-party or rural line service to subscribers in the Dexter exchange area covering both the Watertown and Dexter exchange areas shall not exceed its present mileage rate for such service.

Ordered, 2. That said respondent, New York Telephone Company, shall notify this Commission concerning its acceptance of this order under Section 23 of the Public Service Commissions Law on or before August 10, 1914.

Ordered, 3. That said respondent, New York Telephone Company, shall have leave to make effective the reduced rates herein required on five days' notice to the Commission and the public.

Dated at Albany, the twenty-first day of July, 1914.

IN THE MATTER OF THE APPLICATION OF THE FEDERAL TELEPHONE AND TELEGRAPH COMPANY FOR A DETERMINATION OF JUST AND REASONABLE CHARGES FOR TELEPHONE SERVICE TO USERS OF ITS SERVICE WITHIN THE CITY OF BUFFALO WITHOUT REGARD TO FRANCHISE LIMITATIONS.

Decided August 4, 1914.

**Increase in Rates — Waiver of Franchise Limitations by City Council —
Schedule of Reasonable Rates Allowing Partial Increase
Prescribed by the Commission.**

Upon petition by the Federal Telephone and Telegraph Company asking that the Commission fix a schedule of reasonable rates for the Metropolitan District of Buffalo, it appeared that the company was impelled to make the application because of certain restrictions in municipal

consents. It further appeared that the Common Council of the City of Buffalo had consented to refer the whole question of reasonable telephone rates to the Commission without regard to any franchise limitations as to rates. The Commission considered the petition in the nature of a complaint that the maximum rates chargeable by the company under the franchise agreements were "insufficient to yield reasonable compensation for the service rendered."

**Valuation of Property — Going Value — Revenue and Expenses —
Depreciation — Reasonable Return.**

The company claimed a replacement value of \$4,204,314.34; \$2,737,657.43 was claimed as the value of tangible property including a weighting percentage of 13.52 per cent. to represent undistributed construction expenses and interest during construction. The Commission's engineer estimated the reproduction cost, excluding interest during construction and undistributed construction expenses, at \$1,877,085.99, and allowed 8.3 per cent. for taxes and insurance during construction and contingencies and omissions. An allowance for interest during construction of $4\frac{1}{2}$ per cent. of the replacement value of the property was made. The Commission also allowed \$30,000 for working capital and \$50,000 for organization expenses.

In accordance with the *Kings County* case* the Commission made an allowance of \$150,000 for going concern value.

For construction work at present in progress the Commission estimated, in the absence of evidence by which they might accurately fix the amount, that \$200,000 would be a fair amount.

The Commission accordingly found that the cost of replacement was \$2,614,363.91.

After considering the revenues and expenses of the company, and reducing the amount allowed for depreciation from \$175,000 to \$132,200, the Commission found that the rates prescribed by it would yield a return of 6.44 per cent.

An order was entered permitting the applicant to discontinue its present franchise rates, and to put in force throughout the Metropolitan District of Buffalo the maximum rates prescribed by the Commission.†

OPINION.

DECKER, Commissioner:

The Federal Telephone and Telegraph Company by its petition in this proceeding is asking the Commission to

**People ex rel. Kings County Lighting Company v. Willcox et al.*, 141 N. Y. Sup. 677.—ED.

† Editor's headnote.

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fix a schedule of reasonable rates for its use in what is called the Metropolitan District of Buffalo, taking in the city of Buffalo and some adjoining territory. It is impelled to make such application because of certain rate restrictions in municipal consents (commonly called franchise conditions) which were granted to applicant's predecessor, the Frontier Telephone Company, and because the common council of the city of Buffalo by resolutions passed in July and September, 1912, relating to contracts for city telephones, consented to reference of the whole question of reasonable telephone rates to this Commission, without regard to any franchise limitations as to rates.

The petition of the company is to be considered as in the nature of a complaint by the company that the maximum rates chargeable by it under the franchise requirements are, quoting from Section 97 of the Public Service Commissions Law, "insufficient to yield reasonable compensation for the service rendered." Such complaint apparently may be filed by a telephone corporation under that section. Whether such a complaint can be sustained in view of the limitation of rates contained as a condition in the city franchise and as part of the grant, need not be discussed here, since the city by the action of its common council as above stated has expressly consented to the fixing by the Commission of maximum rates to be charged hereafter by this company.

The company's difficulty is with the following rates per annum as fixed by the so-called franchise:

	<i>Direct line</i>	<i>Two-party</i>	<i>Three-party</i>	<i>Four-party</i>
Business service	\$48 00	\$40 00	\$32 00	\$24 00
Residence service		24 00	20 00	15 00

It claims that these rates are unreasonably low for the service rendered by it in the city of Buffalo. As a matter of fact, the company is not charging these rates now generally to subscribers in the city of Buffalo and the outlying

territory of Lackawanna City, towns of West Seneca and Cheektowaga, and villages of Williamsville, Kenmore, Sloan, Gardenville, Roland and Blasdell, which together comprise its metropolitan district. For that district it has rates in effect corresponding to those which it now desires to make effective for all subscribers in Buffalo, that is to say, for subscribers who have contracts or who may demand contracts at the city franchise rates, as well as for those whose contracts specify the higher metropolitan district rates. In other words, it aims to increase these exceptional city franchise rates to the level of the present metropolitan district rates. The company estimates these increases as applied to the city franchise rate contracts will add to its earnings about \$30,000 per year based upon the service now rendered under such franchise rates. It asserts that if the city franchise rates were applied to all of its business in the district its net revenue over operating cost would be only about \$2,000 for the year. The company shows about 20,000 telephones in service in this district. Four-party rates of \$15.00 for residence and \$24.00 for business are extremely low for that service, with such number of telephones in use. Rates of \$40.00 for two-party and \$48.00 for direct line service for business subscribers are also low for such service.

The following table shows the company's desired rates and the city franchise rates:

METROPOLITAN DISTRICT RATES DESIRED TO APPLY IN ALL CASES FOR BUFFALO SUBSCRIBERS

Business

Direct line	\$72 00
1600 messages (3 cents for each additional message)	48 00
Two-party	60 00
Three-party	
Four-party	36 00
Extension telephones	12 00

Residence

Direct line	36 00
Two-party	
Three-party	
Four-party	24 00
Extension telephones	6 00

CITY FRANCHISE RATES

Business

Direct line	\$48 00
1600 messages	
Two-party	40 00
Three-party	32 00
Four-party	24 00
Extension telephones	12 00

Residence

Direct line	36 00
Two-party	24 00
Three-party	20 00
Four-party	15 00
Extension telephones	12 00

With the exception of the rate for extension telephones, we can say upon general survey of the rates themselves, having knowledge of telephone rates generally as they prevail for unlimited service, that the desired rates as a whole do not appear excessive for the service as rendered by this company in the city of Buffalo. Reserving opinion as to the price for business extension telephones, we think that \$12.00 for a residence telephone extension as provided under the franchise is grossly excessive and that such

charge should not exceed \$6.00. It may be that future investigation of the whole question of extension telephone rates will indicate that \$6.00 is too high for such extension service, but for the present we are content to adopt the generally existing price of \$6.00 for the purposes of this proceeding.

We think that a three-party rate is unnecessary and should be eliminated. There appears to be a demand in Buffalo for the four-party rate in both residence and business service. The applicant desires to continue a two-party rate for business. We see no reason why the two-party facility should not also be continued for residence service at a price midway between the proposed four-party rate and the direct line residence rate, namely, \$30.00. The proposed direct line residence rate is the same as the city franchise rate, \$36.00.

The applicant's present rates are lower than those charged in Buffalo by the New York Telephone Company for a larger number of telephones and its proposed rates are less than those of the New York Telephone Company in Buffalo, except as to the two-party business line and the business extension telephone, as to which the proposed rates of the Federal Telephone and Telegraph Company and the present rates of the New York Telephone Company are the same.

The company has also in force rates for private branch exchange service, about which no claim was made at the hearing, and this service is not covered by any of the franchise rates. We shall not attempt to pass upon these private branch exchange rates in any way at this time, reserving them for determination as complaint may arise.

The metropolitan district revenue from all sources, if the franchise rates were generally applied throughout the district, is estimated by the applicant at \$463,886.14 for 1913. and its expenses are placed at \$461,750.18, which would leave a balance of only \$2,136.96.

We think the applicant's statement of expenses includes an excessive item for depreciation. That item is \$175,000. The plant investment expense of the company as set forth

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in its annual report for 1913 includes, according to a supplemental statement made by the president of the company, an item for depreciation of \$132,200.02. Our telephone engineer, in making up his estimate of annual depreciation for the property in place, arrives at a yearly depreciation of \$113,441.52. Allowing for possible errors in his computation we are inclined to think that the annual report estimate of depreciation may be properly used in this proceeding, namely, \$132,200. This would make the total of the annual expense \$418,950.18. Using that amount for the annual operating expense, the net revenue over operation, if these franchise rates were applied throughout the district, would be \$44,935.96.

The company estimates that its rates throughout the metropolitan district, if these city franchise rates were increased to its metropolitan district rates, would be \$607,428.03. The revenue over operating expenses on that basis would be \$188,477.85.

The company claims an inventory and appraisal as and for a replacement value amounting to \$4,204,314.34. This estimate includes various items which are not admissible in this case. Taking the mere physical plant, it is claimed that real estate, central office equipment, substation equipment, underground plant, aerial plant, office furniture and fixtures, tools and vehicles, amounts to \$2,737,657.43. This includes a weighting percentage of 13.52 to represent undistributed construction expenses and interest during construction. The Commission's engineer in passing upon the inventoried property figures a reproduction cost of \$1,877,085.99 for the items above mentioned, leaving out of calculation interest during construction and undistributed construction expense. There are various kinds of undistributable construction expenses, such as taxes and insurance during construction and contingencies and omissions. These are figured by our telephone engineer at 8.3 per cent., amounting to \$155,798.14, making a total construction expense of \$2,032,884.13. To this must be added an allowance for interest during construction which may be assumed at $4\frac{1}{2}$ per cent. of the replacement of property cost.

This adds to the amount last given \$91,479.78, making a total of \$2,124,363.91.

To this there must be added an allowance for material and supplies, slightly reducing the applicant's estimate, which we place at \$30,000, and for working capital, also reducing applicant's estimate, \$60,000. There is to be taken into account an organization expense which can be only estimated. This involves various legal and other expenses and may be set down as \$50,000. In addition we have to calculate something for developing the business and bringing the plant up into a going concern. This is enjoined upon us by the Court of Appeals in the so-called *Kings County* case.* Much of this so-called cost of developing business must be included in the general operating expenses. We are satisfied that an allowance of \$150,000 is sufficient for that item. The applicant has various items of construction work now in progress. Much of it is due to the installation of the automatic telephone system. The items are detailed in applicant's exhibits. They all constitute a total of \$920,130.71. It is not proper to charge the people of Buffalo in a rate case of this description with construction costs relating to a proposed change in telephone station and office equipment with which the applicant intends to not merely better its service to the public, but to use in increasing its business and with a view to greater net returns in the future. From the amount so stated for such improvement and other betterments applicant shows a retirement of property due to installation of automatic equipment amounting to \$212,600.14, leaving a net improvement expenditure of \$707,530.57. Of this \$453,000 is for automatic central office equipment, leaving \$254,530.57 for various line and station expenditures. We think something should be added for the present work in progress, but we cannot accurately fix that amount from the papers on file so as to distinguish the full cost of the change to the automatic telephone. A proper estimate will probably be somewhere around \$200,000. The total of all these items

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is \$2,614,363.91, which may be taken as the general basis of replacement cost in this proceeding.

Owing to the applicant's methods of keeping its accounts and the length of time which would be involved in a segregation of the accounts pertaining to the Buffalo local area, it has been impracticable to make a detailed examination with reference to ascertaining the original cost of the property here involved. We think, however, that the replacement cost estimates in this case are fairly representative and may be used for the purpose of disposition of this proceeding.

From the amount of estimated revenue over operating expenses as given above, namely, \$188,477.85, something must be deducted under the statute for surplus and contingencies. We think it not unfair that an allowance of \$20,000 should be made for that purpose. The balance, \$168,477.85, is the sum devotable to return upon the herein estimated value of the property, namely, \$2,614,363.91. This affords a percentage return of about 6.44 per cent. From this must be deducted whatever loss may result from providing throughout the entire district two-party lines for residences at \$30.00 per annum, a price midway between four-party and direct line service rates.

Order will be entered permitting the applicant to discontinue the present franchise rates and to put in force throughout the Buffalo local area, commonly called the metropolitan district, maximum rates per annum hereby found to be reasonable and just, as follows, to wit:

Business

Unlimited service except as specified.

Direct line	\$72 00
1600 messages (3 cents for each additional message)	48 00
Two-party	60 00
Four-party	36 00
Extension telephones	12 00

Residence

Direct line	36 00
Two-party	30 00
Four-party	24 00
Extension telephones	6 00

The present private branch exchange rates and the business extension telephone rate are not distributed, but are reserved for such further action as may be necessary in any future proceeding. The order so to be entered will be in force for a period of at least three years, except as the same may be amended or superseded by the further order of the Commission.

ORDER.

For the reasons stated in an opinion by Commissioner Decker adopted and filed in this proceeding,

Ordered, 1. That the applicant, Federal Telephone and Telegraph Company, be, and is hereby, directed and required to charge and collect for its telephone service in the classes below specified rates per annum which shall not exceed the following, to wit:

Business

Unlimited service except as specified.

Direct line	\$72 00
1600 messages (3 cents for each additional message)	48 00
Two-party	60 00
Four-party	36 00
Extension telephones	12 00

Residence

Direct line	36 00
Two-party	30 00
Four-party	24 00
Extension telephones	6 00

Ordered, 2. That this order shall be effective September 1, 1914, and remain in force for three years and thereafter, except and until the same shall be amended, superseded or abrogated by further order of the Commission.

Ordered, 3. That said applicant shall have leave to make the said rates effective upon five days' notice to the public and the Commission.

Ordered, 4. That said applicant shall notify the Commission on or before August 15, 1914, under Section 23 of the Public Service Commissions Law, concerning its acceptance of this order.

EXHIBIT "A."

CLASSIFIED LIST OF STATIONS WITH REVENUES AT FRANCHISE RATES.

<i>Class of service</i>	<i>Number of installations</i>	<i>Franchise rates per year</i>	<i>Revenue at old rate per year</i>
Direct line business.....	2645	\$48 00	\$126,960 00
Direct line business.....	144	40 00	5,760 00
Direct line business.....	116	Free	.....
Two-party line business.....	104	40 00	4,160 00
Two-party line business.....	2	Free	.....
Four-party line business.....	2280	24 00	54,720 00
Four-party line business.....	2	12 00	24 00
Four-party line business.....	14	Free	.....
Direct line residence.....	673	36 00	24,228 00
Direct line residence.....	20	18 00	360 00
Four-party line residence.....	5525	15 00	82,875 00
Four-party line residence.....	154	7 50	1,155 00
Pay stations.....	1805	.....	57,625 80
P B X installations.....	1986	12 00	23,832 00
Special exchange service.....	250	50 00	12,500 00
Intercommunicating exchange service.....	458	15 00	6,870 00
Extensions, exchange service.....	2023	9 00	18,207 00
Extension bells	576	3 00	1,728 00
Push buttons and buzzers.....	49	1 50	73 50
Trunks.	10	48 00	480 00
Jacks.	7	5 00	35 00
Private lines	232	Varying	6,519 28
Desk sets	46	3 00	138 00
Switches.	57	1 50	85 50
Keys.	24	1 50	36 00
P B X switchboards.....	148	20 00	2,960 00
P B X trunks.....	402	48 00	19,296 00
Intercommunicating.....	96	48 00	4,608 00
TOTAL			\$455,236 08

Note.— Number of subscribers in each class of service taken from list of January 1, 1914.

EXHIBIT "B."

CLASSIFIED LIST OF STATIONS WITH REVENUE AT METROPOLITAN RATES.

<i>Class of service</i>	<i>Number of installations</i>	<i>Metropolitan rate per year including 10 per cent. discount</i>	<i>Revenue at new rate per year</i>
Direct line business.....	1789	\$80 00	\$143,120 00
Direct line business.....	1000	53 32	53,320 00
Direct line business.....	116	Free	.....
Two-party line business.....	104	66 66	6,932 64
Two-party line business.....	2	Free	.....
Four-party line business.....	2280	40 00	91,200 00
Four-party line business.....	2	20 00	40 00
Four-party line business.....	14	Free	.....
Direct line residence.....	673	40 00	26,920 00
Direct line residence.....	20	18 00	360 00
Four-party line residence.....	5525	26 66	147,296 50
Four-party line residence.....	154	13 33	2,052 82
Pay stations	1805	.....	57,625 80
P B X installation.....	1986	13 33	26,473 36
Special exchange service.....	250	88 88	22,220 00
Intercommunicating.....	458	16 66	7,630 28
Extension.....	2023	10 00	20,230 00
P B X switchboards.....	148	22 22	3,288 56
P B X trunks.....	402	80 00	32,160 00
Intercommunicating.....	96	80 00	7,680 00
Extension bells	576	3 33	1,918 08
Push buttons and buzzer.....	49	1 67	81 83
Trunks.....	10	80 00	800 00
Jacks.....	7	5 55	38 85
Private lines	232	.....	6,519 28
Desk sets	46	3 00	138 00
Switches.....	57	1 67	95 19
Keys.....	24	1 67	40 00
			<hr/> \$658,181 29
10 per cent. discount; less 10 per cent. discount does not apply to pay stations and private lines.....			59,403 62
			<hr/> <hr/> \$598,777 67

Note.—Number of subscribers in each class of service taken from list of January 1, 1914.

EXHIBIT "C."**SUMMARY OF ESTIMATED ANNUAL EXPENSE.**

<i>Expense</i>	
General.	\$32,903 00
Commercial.	58,049 68
Traffic.	83,730 78
Plant.	84,197 49
Rents.	1,872 06
Taxes.	20,854 19
Insurance.	5,142 98
Depreciation.	175,000 00
<hr/>	
TOTAL.	\$461,750 18
<hr/>	

Notes.—Commercial, traffic and plant expenses are estimated from actual cost for last six months of 1913, added to which is the expense of operating the system with branch exchanges.

General expenses are estimated upon the *pro rata* expense of the general organization chargeable to Buffalo for the first nine months, 1913.

Taxes are estimated upon the amount assessed against the company for the year 1912.

Insurance represents the amount paid at the present time for insurance on Buffalo properties.

Depreciation is estimated on a basis of 7 per cent. on a physical value of \$2,500,000, which is \$1,000,000 less than cost of property in Buffalo.

The figures shown opposite rents, represent the amount being paid at the present time for rent of buildings and land.

No percentage on income is included in the above expenses, and if the company is obliged to pay 3 per cent. on its gross receipts, \$16,681.86 must be added to expense under metropolitan rates.

EXHIBIT "D."**ESTIMATED REVENUE AND EXPENSE USING FRANCHISE RATES.**

Revenue.	\$463,886 44
Exchange.	\$455,236 08
Toll.	8,650 36
Expenses.	461,750 18
<hr/>	
Net earnings	\$2,136 26
<hr/>	

Note.—No interest or earnings on investments are included in these expenses.

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The plant in Buffalo will have cost \$3,500,000 with automatic apparatus included, which amount should be used as a basis of earnings.

Number of subscribers in each class of service taken from list of January 1, 1914.

EXHIBIT "E."

ESTIMATED REVENUE AND EXPENSE USING METROPOLITAN RATES.

Revenue.	\$607,428 03
Exchange.	\$598,777 67
Toll.	8,650 36
Expense.	461,750 18
Net earnings	<u>\$145,677 85</u>

Note.—No interest or earnings on investments are included in these expenses.

The plant in Buffalo will have cost \$3,500,000 with automatic apparatus included, which amount should be used as a basis of earnings.

Number of subscribers in each class of service taken from list of January 1, 1914.

EXHIBIT "F."

NUMBER OF OBSOLETE CONTRACTS IN EACH CLASS IN FORCE AS OF
FEBRUARY 14, 1914.

	Rate	Rate increase	Total increase
943 direct line business at \$48....	24	{ 500 no change 443 at \$24 }	\$10,632 00
50 two-party line business at \$40..	20		
156 three-party line business at \$32	4	{ }	1,000 00
152 party line business at \$32....			
452 four-party line business at \$24	12		5,424 00
58 three-party line residence at \$20	4		232 00
1263 four-party line residence at \$15	9		11,367 00
3074			<u>\$29,887 00</u>

Note.—Of the 943 direct business lines at \$48.00 it is fair to assume that when change in rate is made at least 500 of these subscribers will take the \$48.00 contract limited to 1600 messages per annum.

EXHIBIT "G."

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY,

722 12th Street, N. W., Washington, D. C.

February 27, 1914.

D. S. PORTER,
Division Manager.

MR. G. BARRETT RICH, JR., MGR., *Federal Telephone & Telegraph Company, Buffalo, N. Y.:*

DEAR SIR:

Your letter of the 17th instant, addressed to Mr. George W. Harris, Secretary, Washington Rotary Club, was, as you have been advised by Mr. Harris, referred to me as the telephone member of the club, and I take pleasure in setting forth below the telephone rates we quote for various classes of service in this city.

Business Service.

1. Yearly Settlement.

<i>Number of local messages to be sent in one year</i>	<i>Annual rate direct line</i>	<i>Additional local mes- sages</i>
600	\$39 00	5 cents
800	48 00	5 cents
1000	57 00	5 cents
1200	66 00	4 cents
1400	72 00	4 cents
1600	78 00	4 cents
1800	84 00	4 cents
2000	90 00	4 cents
2200	96 00	4 cents
2400	102 00	4 cents
2700	108 00	3 cents

For convenience in accounting, contracts will be taken or renewed only at the above figures, or figures obtained by advancing from 2700 to 4500 in lots of 300, at \$2.00 per hundred; but in making adjustments at the end of the contract year, when the number of messages sent is less than the number paid for, the entire schedule (which advances by steps of 100 from 600 to 4500 messages) will be taken into consideration.

2. Monthly Settlement.

Two-party line; thirty local messages a month; yearly contract; \$2.50 a month; additional local messages five cents each.

Extension telephone, 50 cents a month.

Residence Service.

1. Yearly Settlement.

<i>Number of local messages to be sent in one year</i>	<i>Annual rate direct line</i>	<i>Additional local mes- sages</i>
600	\$39 00	5 cents

2. Monthly Settlement.

Two-party line; thirty local messages a month; yearly contract; \$2.50 a month; additional local messages, five cents each.

Flat Rate.

Direct line, per annum..... \$48 00

Direct line, flat rate service at a residence may be suspended for a period not exceeding four months in one year, and a rebate allowed equivalent to half the rate during the period of suspension. On a four months' suspension, this rebate would amount to \$8.00, reducing the net cost of direct line, flat rate service to \$40.00 per annum.

Extension station \$0 50

Private Branch Exchange Service.

Annual equipment charges — Switchboard and operator's set \$24.00; trunk lines \$24.00 each; branch telephone instruments \$6.00 each; local messages 2½ cents each.

I trust the foregoing will be found to cover in detail the information you have asked for.

Yours very truly,
(Signed) D. S. PORTER,
Division Manager.

IN THE MATTER OF THE APPLICATION OF THE FEDERAL TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO ISSUE BONDS FROM TIME TO TIME UNDER ITS FIRST MORTGAGE FOR THE PURPOSE OF REFUNDING ITS OUTSTANDING OBLIGATIONS REPRESENTED BY CERTAIN UNDERLYING BONDS.

Case No. 3586.

Decided August 5, 1914.

Extension of Previous Authorization Allowing Issue of Bonds to Refund Outstanding Underlying Bonds.

SUPPLEMENTAL ORDER.

In the above entitled matter the applicant asks for an extension to July 31, 1915, of the authorization contained in the Commission's order* dated July 31, 1913, the terms of which forbade the issue of any bonds thereunder after the expiration of one year from the date of the order except upon further application to the Commission and the issuance by the Commission of a further supplemental order. The applicant also asks permission to include bonds of the Batavia Home Telephone Company and the Dunkirk Home Telephone Company in the list of underlying bonds proposed to be refunded. It appears to the satisfaction of the Commission that the conditions under which its original order was granted are practically unchanged and that said order and authorization should continue in effect for another year. Now, therefore,

It is ordered, That the Commission's order* of July 31, 1913, authorizing the issue of certain bonds by the Federal Telephone and Telegraph Company shall continue in force and effect for a further period of one year from July 31, 1914, in all its clauses and conditions, except that ordering clause 3 of said order of July 31, 1913, shall now read, " That no bond herein authorized which shall remain unissued on July 31, 1915, shall be sold or disposed of without the further order of the Commission "; and except that

* Printed in Commission Leaflet No. 22, at page 931.—Ed.

to the list of outstanding underlying bonds specified in the original order of July 31, 1913, as those which it is proposed to purchase, there shall be added the following:

Batavia Home Telephone Company bonds, 6 per cent. first mortgage.

Total issue, \$50,000.00.

Date of issue, November 1, 1901.

Due, January 1, 1927.

Trustee, Columbia Knickerbocker Trust Company, New York.

Dunkirk Home Telephone Company bonds, 5 per cent. first mortgage.

Total issue, \$50,000.00.

Outstanding, \$26,100.00.

Date of issue, April 15, 1910.

Due, April 15, 1935.

Trustee, Columbia Knickerbocker Trust Company, New York.

Dated at Albany, August 5, 1914.

OKLAHOMA.

Corporation Commission.

**ROGER MILLS TELEPHONE COMPANY v. HAMMON CENTRAL
TELEPHONE COMPANY.**

Case No. 1989 — Order No. 834.

Decided July 13, 1914.

Compulsory Physical Connection.

This was a complaint by the Roger Mills Telephone Company alleging that the Hammon Central Telephone Company refused to make physical connection with the lines of the complainant in Strong City.

It appeared that the Roger Mills company operates a local exchange in Cheyenne and also has a line running from Cheyenne to Strong City, that the defendant operates a local exchange at Strong City and has a line extending from Strong City to the corporate limits of the town of Cheyenne, where it connects with a line owned by one Tramwell, on which are three telephones located within the town of Cheyenne, that the service of each company between Cheyenne and Strong City is what is commonly known as "the mutual system"; i. e., each subscriber may talk to any other subscriber without extra charge.

It further appeared that at no point was there physical connection between the lines of the complainant and the defendant, that because of this lack of connection when a subscriber of the complainant at Cheyenne wished to talk with a subscriber of the defendant at Strong City, it was necessary to route the message *via* the Pioneer Telephone Company over a distance of 150 miles, whereas the distance between Cheyenne and Strong City was but seven miles.

Ordered, That the defendant connect with its exchange at Strong City the line of the complainant extending from Cheyenne to Strong City.

That the complainant connect with its exchange at Cheyenne the line of the defendant extending from Strong City to Cheyenne.*

OPINION AND ORDER.

The complaint in this case was filed by the Roger Mills Telephone Company against the Hammon Central Tele-

* Editor's headnote.

phone Company, alleging in substance, that the Hammon Central Telephone Company refuses to make physical connection with the lines of the Roger Mills Telephone Company; that the result of such refusal to make physical connection has been to force subscribers of the Roger Mills Telephone Company at Cheyenne to use the toll lines of the Pioneer Telephone and Telegraph Company when they desire connection with the local subscribers of the Hammon Central Telephone Company in Strong City; that in using the toll lines of the Pioneer Telephone and Telegraph Company messages have to be routed approximately 150 miles, whereas, if routed over the clear wire of the Roger Mills Telephone Company, the messages would have to be routed but seven miles; that said refusal to make physical connection has also resulted in rural subscribers of either company being forced to patronize long distance lines when a rural line between the two towns was in operation.

This case was set down for hearing at Cheyenne on March 31, 1914, and at that time it was agreed that the case be submitted to the Commission for its action on an agreed statement of facts, which is in substance as follows:

The Roger Mills Telephone Company is a public service corporation, operating a local exchange in Cheyenne and has rural lines emanating therefrom. It also has a toll connection with the Pioneer Telephone and Telegraph Company. The company also has a line from Cheyenne to Strong City. The Roger Mills Telephone Company's rural lines run from its central office in Cheyenne to the towns of Rankin, Dempsey, Sweetwater and Berlin.

The defendant, the Hammon Central Telephone Company, is also a public service corporation with local exchanges in the towns of Hammon and Strong City in Roger Mills County; with various rural lines connected thereto; and long distance connection with the Pioneer Telephone and Telegraph Company at Strong City. It also operates local exchanges with free toll connections with the towns of Berlin, Roll, Durham, Crawford, Strong City, Hammon,

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in Roger Mills County, and several other exchanges in adjoining counties.

In the agreed statement of facts it also appears that the Hammon Central Telephone Company owns a telephone line from the town of Strong City to the corporate limits of the town of Cheyenne where the same connects with a line owned by R. L. Tramwell, and has three telephones thereon in the town of Cheyenne. The result of operating this line is such that residents of Cheyenne who may be apprised of the fact may use one of the three telephones and thereby secure free service to Strong City, which results in a discrimination against such residents who may not have access to this line.

In the agreed statement of facts it also appears that the Roger Mills Telephone Company owns a line from Cheyenne to Strong City and this line is hereafter spoken of as the line to be used as a clear wire.

The public would be much more adequately and conveniently served if both these wires were connected with each telephone central at Cheyenne and Strong City. It appears that the service between Cheyenne and Strong City such as is now afforded is what is known as the mutual system and no charge is made therefor. That is, the clear wire of the Hammon Telephone Company from Strong City to Cheyenne connects with certain subscribers in the town of Cheyenne. These subscribers can talk to any of the subscribers of the Hammon Central Telephone Company either rural or local without extra charge. The same is true of the Roger Mills County Telephone Company, which also has a similar wire between the two towns. Both these wires should be connected with the central offices in Cheyenne and Strong City. If it is desired by the complainant and defendant to continue operating these lines locally without charge as to the subscribers of each exchange including the rural subscribers connected therewith, we see no reason why they should not do so.

It is, therefore, ordered, That the defendant, the Hammon Central Telephone Company, shall connect the clear

wire of the Roger Mills Telephone Company, complainant, with its exchange at Strong City.

It is further ordered, That the complainant shall connect the clear wire of the defendant with its exchange at Cheyenne.

Should further order be desired as to the manner in which these lines shall be operated, the same will be considered by the Commission upon application of either party or the public.

Oklahoma City, Oklahoma, July 13, 1914.

PENNSYLVANIA.

The Public Service Commission.

**IN THE MATTER OF REQUIRING PUBLISHED RATES AND FARES
TO CONTINUE IN EFFECT FOR THIRTY DAYS.**

Dated July 23, 1914.

**Conference Ruling — Prohibiting Changes in Schedules on Less than Thirty
Days' Notice.**

CONFERENCE RULING No. 1.

The Public Service Company Law, approved July 26, 1913, Article 2, Section 1, (f) provides in part as follows:

“ To make no change in any tariff or schedule, which shall have been filed or published or posted by any public service company in compliance with the preceding sections, except after thirty days' notice to the Commission and to the public, posted and published in the manner, form and places required with respect to the original tariffs or schedules, which shall plainly state the exact changes proposed to be made in the tariffs or schedules then in force, and whether an increase or decrease, and the time when the proposed changes will go into effect; * * *

The term “ then in force ” as employed in the paragraph above quoted must be interpreted as requiring that a tariff or schedule filed and posted must be allowed to become effective and remain in effect for at least thirty days before any change may be made therein, but this will not affect tariffs or schedules containing rates for excursions limited to certain designated periods under authority of General Order No. 4, of twenty-first day of January, 1914.

Harrisburg, Pennsylvania, July 23, 1914.

IN THE MATTER OF THE REGULATION OF CROSSING OF FACILITIES OF ONE PUBLIC SERVICE COMPANY WITH THOSE OF ANOTHER PUBLIC SERVICE COMPANY.

General Order No. 11.

(Superseding General Order No. 2.)*

Dated August 5, 1914.

Regulations as to Crossings.

And now, August 5, 1914, until otherwise hereafter determined and ordered, any public service company, subject to the provisions of The Public Service Company Law, approved July 26, 1913, before constructing any structures or other facilities across the structures or other facilities of any other public service company, whether under ground, or above ground, or at the same or different levels, shall serve ten days' (or shorter notice, if specially allowed by the Commission, upon sufficient cause being shown,) written notice upon the public service company or companies whose structures it is so desired to cross, which notice shall specify the nature and character, way and manner, of such contemplated crossing, and the exact location thereof, and shall file with the Commission a true copy of the notice so served, with proof of service thereof; *provided*, however, that if an agreement which shall specify the nature and character, way and manner, of the construction of the proposed crossing be in force between the public service company proposing to cross and the public service company whose structures or facilities it is proposed to cross, it shall be sufficient if the above notice, served and filed, with proof of such service, with the Commission, as aforesaid, shall state the exact location of such crossing, and that the same will be constructed in accordance with said agreement and specifications referred to therein, a true copy of the said agreement and specifications being also filed with the Commission together with said notice.

* Printed in Commission Leaflet No. 27, at page 155.—Ed.

The public service company or companies desiring to construct such crossing may, after the termination of the period of said notice, proceed therewith, in accordance with the specifications as stated or referred to in said notice, as above provided, unless, within the period of said notice, served as aforesaid, the public service company or companies affected by such crossing shall serve upon the company or companies proposing to make such crossing, and file with the Commission, a protest against the construction of the same, or unless, without such protest, the Commission, within the period of said notice, filed with it as aforesaid, shall, of its own motion, direct that the crossing shall not be proceeded with.

Such protest shall set forth the reasons which, in the judgment of the protestant, show that the Commission should not approve such crossing, and proof of service thereof, as aforesaid, shall be filed with the Commission within three days of the filing of the protest with the Commission.

The Commission, upon consideration of such notice or protest, or both, may fix a time and place for hearing, after due notice, and determine whether or not such crossing shall be approved. This regulation shall apply to all such crossings between the structures or facilities of any public service company and the structures or facilities of any other public service company, other than crossings between railroads and street railways, and shall be subject to the specific regulations that may hereafter be adopted by the Commission.

This order supersedes General Order No. 2* upon the same subject.

* Printed in Commission Leaflet No. 27, at page 155.—En.

VIRGINIA.

State Corporation Commission.

IN THE MATTER OF THE FILING WITH THE STATE CORPORATION
COMMISSION BY PUBLIC UTILITIES SCHEDULES SHOWING
RATES AND CHARGES.

Circular No. 12.

Dated August 1, 1914.

Filing of Rate Schedules Ordered.

To all Heat, Light, Power, Water and Telephone Companies doing business in Virginia:

Your attention is called to an Act of the General Assembly of Virginia, approved March 27, 1914, entitled "*An Act Imposing Public Duties on Heat, Light, Power, Water and Telephone Companies and providing for the control and regulation of such companies by the State Corporation Commission,*" a copy* of which Act you will find printed in full on the back of this circular.

You will observe that Sub-section (a) of Section 1 of this statute requires every public utility to file with the State Corporation Commission and to keep open for public inspection schedules showing rates and charges made either for itself or joint rates or charges between itself and any other public utility or utilities.

Therefore, the State Corporation Commission directs that every corporation operating a public utility shall, within 30 days from the date of this circular, file in the office of this Commission, schedules showing rates and charges made either for itself or joint rates and charges between itself and any other public utility or utilities and to arrange to post and keep open for public inspection, copies of such schedules.

* The copy of the act is omitted from this Leaflet.— Ed.

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Each such schedule should be printed or typewritten so that it can be plainly read and in such form and language as can be easily understood.

Each company, whenever submitting its schedules of rates, should enclose the same with a letter advising of the enclosure, such letter to be written in duplicate, and the Commission will acknowledge the receipt of the filing of such schedules of rates by returning a copy of the letter of advice with the official stamp of the Commission showing date of the receipt upon the same.

WISCONSIN.

Railroad Commission.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE LINE OF
THE RANDOM LAKE TELEPHONE COMPANY IN THE TOWN
OF SHERMAN, SHEBOYGAN COUNTY, WISCONSIN.

Decided July 20, 1914.

**Public Convenience and Necessity — Duplication Not Permitted Where
Physical Connection Is an Adequate Substitute.**

Held: That as the construction of a physical connection between the East Valley Telephone Company and the Random Lake Telephone Company is a feasible and adequate means of affording to the present and prospective subscribers of the former the service needed by them, the Commission will not permit the paralleling of the line of the East Valley company by that of the Random Lake company.*

OPINION AND DECISION.

This case involves a proposed extension of the Random Lake Telephone Company's line parallel to the line of the East Valley Telephone Company from a point some two miles southwest of Adell, Wisconsin, toward the village of Adell. This line would have as its patrons several persons residing along a highway on which the East Valley line is now located. Objection to the construction of this extension was made by the East Valley Telephone Company and a hearing in the matter was held at Waldo, Wisconsin, on July 13 and 16, 1914. The Random Lake Telephone Company was represented by *Emil C. Thiel*, and the East Valley Telephone Company by *P. B. Van Blarcom* and *August G. Bartelt*.

The purpose for which the proposed telephone line would be used would be to give service into Adell to certain persons living within a mile or two of that village. The Ran-

* Editor's headnote.

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dom Lake Telephone Company has a line running into Adell from another direction, and does most of the local telephone business of that village through its exchange. Thus, the proposed subscribers would be able to reach Adell through the exchange at Random Lake. The East Valley line which runs past their residence also runs into Adell, but has no exchange there and only reaches three business places in the village. The inability of persons living near Adell on the East Valley line to reach more than these three business places has resulted in their desire to have the Random Lake service. This is a case where a physical connection is very clearly an adequate and feasible remedy for the difficulty in which the residents to the southwest of Adell find themselves. To permit the paralleling of the East Valley line for some distance toward Adell would result in the sort of unnecessary duplication which the law seeks to avoid. It seems that there is at present a physical connection between the two companies at a point called Silver Creek, but that the service through this connection is irregular, owing to the intermittent character of the attendance at the switch. To avoid this difficulty, a line is now being built between the exchanges of the two companies which will result in a physical connection between switchboards continuously attended by operators, and when this line is ready for service there should be no trouble in exchanging service between the two companies. If the construction of this line does not proceed as rapidly as it should, or if the charge made for conversation through the physical connection seems to anyone to be unreasonable, these matters can be taken up with the Commission for adjustment.

For the reasons stated, we find and determine that public convenience and necessity do not require the extension of the line of the Random Lake Telephone Company in the town of Sherman, Sheboygan County, in the manner proposed by that company in its notice filed with the Commission June 30, 1914.

Dated at Madison, Wisconsin, this twentieth day of July, 1914.

IN THE MATTER OF THE APPLICATION OF MICHAEL T. GEHL
AND OTHERS, FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY FOR THE CONSTRUCTION OF TELEPHONE
LINES IN THE TOWN OF ADDISON, WASHINGTON COUNTY,
WISCONSIN.

Decided July 21, 1914.

Public Convenience and Necessity — Duplication Allowed in Border Territory Where Physical Connection Is Not an Adequate Substitute.

Held: That as the lines of the Allenton-Kohlsville Telephone Company, part of which the proposed lines of the applicant will parallel, are so situated that physical connection is not practical as a means of affording to the present and prospective subscribers of the Allenton company the service needed by them, and as the territory in question is border territory not clearly within the field of either the Allenton company or the applicant, public convenience and necessity require the extension proposed by the applicant;

That the decision of the Commission is limited to the peculiar facts of this case.*

OPINION AND DECISION.

The applicant, Michael T. Gehl, and six others, residing along a highway running east and west in the town of Addison, Washington County, Wisconsin, propose to construct a telephone line to connect their various residences with a line of the Hartford Rural Telephone Company which crosses at right angles the highway on which the proposed line is to be located. The Hartford Rural Telephone Company is willing to connect with the proposed line and give its members service, but objection is made by the Allenton-Kohlsville Telephone Company, a public utility operating a line for local service along the same highway on which the new line would be built. A hearing was held in the matter at Hartford on June 22, 1914, at which the applicants were represented by *Michael T. Gehl*, the Allenton-Kohlsville Telephone Company by *M. H. Schmitt*, and the Hartford Rural Telephone Company by *A. W. Brown*.

The proposed line would be a little over two miles in length and would run for most of its distance parallel with

* Editor's headnote.

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the Allenton-Kohlsville line on the same highway. The latter line now serves a few of the applicants, who propose to discontinue Allenton-Kohlsville service upon becoming connected with the Hartford Rural line. The remainder of applicants now have no service, although the Allenton-Kohlsville line runs past the residences of most of them. The testimony of the applicants was to the effect that their business and social interests lie southward in the direction of Hartford, while the only connection they could get by using the Allenton-Kohlsville service was with the village of Allenton, several miles to the north, and with other places still further north. Connection between Allenton and Hartford may be had by the use of the Wisconsin Telephone Company's toll line, but this necessitates the payment of a 15-cent toll per message. The objection of the Allenton-Kohlsville Telephone Company to the construction of the new line was on the ground that it would compete directly with that company's line on the same highway and would actually deprive that line of subscribers. That Allenton-Kohlsville Telephone Company presented at the hearing a statement signed by two of the applicants in this case to the effect that they had been under a misapprehension when they signed the application and that they actually desired the Allenton-Kohlsville service. Two other persons, not signers of the petition, also signed the Allenton-Kohlsville Telephone Company's petition, and expressed themselves as being satisfied with that company's service.

The situation with regard to the physical location of the lines of the Hartford Rural and Allenton-Kohlsville telephone companies seems to be such that a physical connection between them would be impracticable. The two companies do not enter any community where the establishment of a switch would be possible, and, in fact, at the present time there is no point of contact whatever between them, since the Allenton line terminates half a mile short of the north and south road on which the Hartford line is built. To attach the loaded line of the Hartford company

to the loaded line of the Allenton company by merely tying one to the other without a switch would, of course, result in the establishment of a single line greatly overloaded. The only possible means of physical connection between the companies would be a new line constructed between Allenton and Hartford and carrying no subscribers. Such a line would necessarily be something over ten miles in length and if such line were to be constructed it would have to be used rather as a toll line than merely as a means of physical connection, since neither company could, presumably, afford to erect and maintain so long a line for free interchange of messages. The evidence indicates that Hartford and Allenton are centers of population quite distinct from one another. One is located on the Chicago, Milwaukee and St. Paul line, and the other on the "Soo" line, and railroad connection is not direct. The testimony seems to indicate that a person in the region involved in this case having business and social interests in Hartford would not be likely to have any in Allenton, and *vice versa*. The testimony also tends to show that the east and west highway on which the proposed line would be constructed is about the boundary line between the rural community tributary to Allenton and that tributary to Hartford; in fact, four of the residents along this highway are interested in the present application and desire to have connection toward Hartford, while at least as many more of the residents along this highway have expressed their preference for service toward Allenton.

In border territories like that involved in this case, there is sometimes presented a situation where some overlapping of telephone lines is required in order that public convenience and necessity with regard to telephone service may be fully satisfied. While such overlapping may at times do some injury to one of the companies and the general policy of the law is usually against the duplication of lines which will impair investments, still it is also true that the convenience and necessity of the public itself in the matter of telephone service is the paramount considera-

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tion, and where the public needs can only be satisfied by permitting a certain amount of overlapping, the doctrine of protection for existing interests cannot be carried to its full length.

Ordinarily, in a situation of this kind, the remedy sanctioned by the policy of the law is that of a physical connection. Clearly, if a connection between the Allenton and Hartford lines could be established under such circumstances that a subscriber of one company could converse with a subscriber of the other, at a very small cost for transfer of messages, and without any appreciable cost for long distance transmission, there would be no public necessity for the construction of the new line. This Commission has had occasion in the past to point out to persons or companies desiring to extend lines in duplication of other lines, that public convenience and necessity will be best satisfied by a physical connection and no duplication of lines is needed. The situation here appears to be different, however. The highway in question is the south boundary of one line and the northern or northwestern boundary of the other. The lines reach no common point and a physical connection as distinguished from the establishment of a long distance toll service between the companies seems to be practically impossible. Under these circumstances it may well be that the needs of the public can be best satisfied by permitting the construction of the line proposed by the applicant.

It is not often that a situation involving just the particular elements that are present in this case is brought before the Commission, and until another situation develops which is similar in all respects the action taken in this case should not be looked upon as a precedent. Usually there is either the possibility of physical connection, or the territory involved in the case is quite clearly within the field of one company or the other. There is usually, of course, no public convenience and necessity which will require a telephone company to extend into territory clearly outside of its proper field merely because someone in the

territory wants to reach persons served by the company in question. But here the highway involved in the case seems to be actually the boundary between the two communities, as nearly as such boundary can be ascertained.

Another matter to be considered in this case is that the construction of the proposed line will not result in great loss to the Allenton-Kohlsville Telephone Company. About two subscribers will be lost to it, but several will remain on its line on the highway in question, and the actual diminution of the company's revenue will not be great enough to be material. This, of course, does not mean that duplication of lines is to be permitted merely because it has only a small effect on the revenues of the other company; but, taken in connection with the circumstances of this case, the fact that the loss to the Allenton-Kohlsville Telephone Company will not be serious is worthy of consideration.

We believe the facts disclosed in this case warrant the finding that public convenience and necessity require the construction of the line proposed by the applicant, and a declaration to that effect will, therefore, be made.

We find and determine that public convenience and necessity require the construction of the line for telephone service in the town of Addison, Washington County, Wisconsin, in the manner proposed by the applicant, Michael T. Gehl, and others, and designated in the diagram attached to the application herein.

Dated this twenty-first day of July, 1914.

In re INVESTIGATION ON MOTION OF THE COMMISSION OF THE SERVICE OF THE PEOPLE'S TELEPHONE COMPANY AND THE WISCONSIN TELEPHONE COMPANY AT FALL RIVER, WISCONSIN.

Decided July 28, 1914.

Extension of Line into Occupied Field Not Required When Service of the Occupying Company is Adequate.

Held: That where adequate service can be rendered by the company already in the field, the Commission will not authorize, much less require the extension of the lines of another company into that territory

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**Certificate of Public Convenience and Necessity Required Before Company
Operating a Toll Station in a Community May Establish Stations
for Service Local in Character.**

Held: That a company which has a toll station in a locality is not obliged to establish in that locality other stations for service local in character;

That such a company could establish local service only after obtaining the approval of the Commission.*

OPINION AND DECISION.

This is an investigation on motion of the Commission of the service rendered by the People's Telephone Company and the Wisconsin Telephone Company at Fall River, which was instituted following the receipt of a complaint signed by eight residents of that village. This complaint alleges in substance that the service of the People's Telephone Company is inadequate because of poor equipment and inefficient operation; that the Wisconsin Telephone Company formerly operated telephones within the village of Fall River connected directly with its Columbus exchange, but that since a physical connection has been established between it and the People's Telephone Company, it has withdrawn this service except to one patron who still retains his telephone connection with Columbus; that an additional fee of \$3.00 is charged subscribers of the People's Telephone Company at Fall River for connection with Columbus and for printing their names in the Columbus directory of the Wisconsin Telephone Company; that but two toll lines are operated between the Fall River and Columbus exchanges, which toll lines are inadequate for the traffic; and that direct connection over the lines of the Wisconsin Telephone Company is necessary for the adequate service of business men and other residents of Fall River. The Commission is asked to require the People's Telephone Company to furnish adequate service, and to authorize and direct the Wisconsin Telephone Company

* Editor's headnote.

to furnish direct service to such business men and residents of Fall River as desire it.

A hearing was held on March 23, 1914, at Fall River. *George E. Buns* appeared for the complainants, *Doerfler, Green and Bender*, by *T. H. Sanderson*, for the People's Telephone Company, and *J. F. Krizek* and *F. M. McEniry* for the Wisconsin Telephone Company.

Witnesses for the complainants conceded at the hearing that the service of the People's Telephone Company had shown marked improvement since the filing of the complaint, and that it is now satisfactory in most respects. In view of this fact and the further consideration that the Commission is now engaged in formulating general standards of adequate telephone service which will be made effective in the near future, it appears inadvisable to take any action with reference to that phase of the complaint at the present time. Our decision as to the adequacy of the service of the People's Telephone Company will, therefore, be held in abeyance.

In our judgment the extension of the service of the Wisconsin Telephone Company into the territory already occupied by the local company is not warranted by the local conditions. Such an extension would inevitably result in duplication of equipment and, unless carefully safeguarded, in the ultimate ousting of the less powerful company. It is the express intent of Chapter 610 of the Laws of 1913 to eliminate the waste of such unwarranted competition, and the Commission has repeatedly refused to countenance the extension of lines where adequate service can be rendered by the company already in the field. That it is physically possible for the People's Telephone Company to render adequate service with its local exchange and with a sufficient number of direct connecting lines between its Fall River exchange and the Columbus exchange of the Wisconsin Telephone Company cannot be questioned. It would, therefore, be contrary to the established policy of the legislature and of this Commission to permit or require the extension of the Wisconsin Telephone Company's lines

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into Fall River for local service, even though such action were legally possible.

However, in the present case the Commission is without jurisdiction to require such an extension. The Wisconsin Telephone Company maintains one toll station within the village limits of Fall River, connected directly with its Columbus exchange. It is impossible for the proprietor of this station to be connected with other residents of Fall River without making use of both the Columbus and Fall River exchanges and the physical connection between the two companies. This cannot be regarded as local service, and the Wisconsin Telephone Company is not obliged to establish other stations in the village which would render its service local in character. On the contrary, such extension of its service could only be made after filing notice with and securing the approval of this Commission under Chapter 610, Laws of 1913.

The prayer of the complaint for the extension of the service of the Wisconsin Telephone Company into Fall River is, therefore, dismissed.

Dated at Madison, Wisconsin, this twenty-eighth day of July, 1914.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE LINE OF
THE EAST VALLEY TELEPHONE COMPANY IN THE TOWNS
OF SCOTT AND SHERMAN, SHEBOYGAN COUNTY, WIS-
CONSIN.

Decided July 31, 1914.

Extension of Lines into Unoccupied Territory.

Upon notification by the East Valley Telephone Company of a proposed extension of its lines in the towns of Scott and Sherman, it appeared that the extension had already been built, running easterly from a point on the East Valley line into territory in which no telephone line was then in existence. The eastern end of the extension was about a mile west of the nearest point on the Random Lake Telephone Company's line. The Random Lake Telephone Company filed its objection.

Unwilful Violation of the "Public Convenience and Necessity" Law.

Held: That although the East Valley company had constructed its line subsequent to the passage of the "public convenience and necessity" law, and without obtaining the permission of the Commission, nevertheless as the violation of the law was unwilful, it is the policy of the Commission to treat the matter as though the legal requirements had been complied with and not to require the removal of the line unless the circumstances were such as would have necessitated a finding adverse to the construction of the line had the proper proceedings been taken in the first place.

Public Convenience and Necessity.

Held: That when territory is entirely unoccupied there is a plain public convenience and necessity requiring some telephone service, and when one company is aggressive enough in the promotion of its business to take steps toward entering the territory, it is difficult to say there is no public convenience and necessity requiring its line.

That had the East Valley Telephone Company notified the Commission in the regular way of its proposed extension, it would have been impossible to find that public convenience and necessity did not require the extension. No wilful violation of the law is evident.

The Commission refused to take any action looking toward the withdrawal of the East Valley Telephone Company from the territory in which the extension was built.

Choice of Prospective Subscribers — Physical Connection.

It appeared that certain persons living along the extension made by the East Valley company preferred the service of the Random Lake Telephone Company as their business and social interests were in the direction of Random Lake.

Held: That it is almost inevitable in the case of an extension of a telephone line the unoccupied territory situated between two companies that some of the residents will prefer the service of the company which is not making the extension.

That the remedy for this situation is a physical connection between the companies by which messages can be interchanged and the required service furnished without duplication of lines.*

OPINION AND DECISION.

On August 26, 1913, the East Valley Telephone Company notified this Commission of a proposed extension of its

* Editor's headnote.

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line in the towns of Scott and Sherman, Sheboygan County, Wisconsin. Upon investigation by the Commission it was found that the extension had already been built. The extension thus constructed is about two and a half miles in length, running in an easterly direction from a point on the East Valley line into territory in which no telephone line was then in existence. The eastern end of the extension was about a mile, more or less, west of the nearest point on the Random Lake Telephone Company's line, and that company objected to the extension for the reason that it considered the territory to belong to itself. An informal conference was held on the matter in September, 1913, but it was not made to appear clearly what the needs of the residents along the new East Valley line were, and the matter was allowed to rest during the winter in order to afford more opportunity for a determination of the actual situation. Certain residents near the western end of the new extension who had been desirous of obtaining Random Lake service when the matter first came up, renewed their request for such service early in the spring of the present year, and the matter was set for a final hearing at Random Lake on May 15, 1914. At this hearing the East Valley Telephone Company was represented by *P. G. Van Blarcom* and *August G. Bartelt*, and the Random Lake Telephone Company by *Emil C. Thiel*.

There is no doubt that the construction of the East Valley line in the fall of 1913 in the manner above described was technically a violation of Chapter 610 of the Laws of 1913. That chapter went into effect July 10, 1913, and the construction of the line was not begun until after this date. For the first few weeks after the law became effective, however, there was not a clear understanding of its provisions and requirements among the telephone utilities of the State, and for this reason the Commission has been disposed in cases of unwilful violation of the law during the period in question to treat the matter as though the legal requirements had been complied with and not to require the removal of the line unless the circumstances were such

as would have necessitated a finding adverse to the construction of the line had the proper proceedings been taken in the first place.

In the present case, the line was built into new and unoccupied territory. The Random Lake Telephone Company, according to the testimony, hauled poles into this territory about the time the East Valley Telephone Company built its line, but the latter company proceeded with the construction of the line more promptly and forestalled the Random Lake company. The latter company, however, had not instituted any proceedings before the Commission with a view to obtaining the right to build a line. Ordinarily, when territory is entirely unoccupied, there is a plain public convenience and necessity requiring some telephone service, and when one company is aggressive enough in the promotion of its business to take steps toward entering the territory, it is difficult to say there is no public convenience and necessity requiring its line. Thus, it is very unlikely that the Commission could have made a finding adverse to the East Valley Telephone Company had its notice been filed in the usual way and in strict compliance with the law.

The evidence shows that several persons living along the last mile of the extension made by the East Valley Telephone Company desire the Random Lake Telephone Company's service and do not wish to take the service of the East Valley company. The reason for their choice is the preponderance of their business and social interests in the direction of Random Lake over those in the direction of the East Valley line. The remedy for this situation, however, is a physical connection between the companies by which messages can be interchanged without the duplication of lines. It is almost inevitable that in case of an extension of a telephone line into unoccupied territory intermediate between two companies, some of the residents will prefer the service of the company which is not making the extension, and in some such cases where physical connection is not feasible it has been found necessary to per-

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mit some overlapping and paralleling of telephone lines in order to serve the real public needs. Here, however, a physical connection is not only feasible but is in process of construction between the two companies, and, we are advised, will soon be in operation. If it is not completed as soon as it should be or is not operated upon reasonable terms, the difficulty can be remedied by application to the Commission.

It follows from what has been said that had the East Valley Telephone Company notified this Commission in the regular way of its proposed extension, and had the same facts been brought out in support of its proposition that are now before the Commission, it would have been impossible to find that public convenience and necessity did not require the extension. The evidence does not indicate any wilful violation of the law by the company, but rather a failure to comprehend its requirements. Under these circumstances, no action will be taken by the Commission looking toward the withdrawal of the East Valley Telephone Company from the territory in which the new extension was built.

Dated at Madison, Wisconsin, this thirty-first day of July, 1914.

IN THE MATTER OF THE APPLICATION OF THE CASCADE TELEPHONE COMPANY FOR AUTHORITY TO INCREASE RATES.

Decided August 5, 1914.

Increase in Rates — Discount for Prompt Payment.

OPINION AND DECISION.

The present rates of the applicant are stated to be \$1.00 per month on all party lines having two or more 'phones, and \$1.25 per month on all single party lines. The application is for authority to increase the rate to \$1.25 per month on all party lines having two or more 'phones, and \$1.50 per month on all single party lines.

Hearing was held at the office of the Railroad Commission at Madison on May 20, 1914. *J. E. Hoffman* appeared for the petitioner. There were no appearances in opposition.

The hearing disclosed that the company had been in operation about two years: That there had been expended in the construction of the system a sum of about \$6,000; that the income from operation was not sufficient to pay a fair return upon the capital invested after operating expenses were met; and that certain extensions and improvements were desired to be made for which it would be necessary to raise additional capital. It was testified that the earnings from operation during the year 1913 amounted to approximately \$1,748.70 of which some \$250 remained uncollected at the close of the year's business. The operating expenses were stated to be \$1,435.71, but from the testimony it seemed that certain amounts were included in that sum which were not properly chargeable to operating expense. The absence of adequate financial reports made it necessary to examine the books and vouchers of the company to determine what items, if any, were improperly given as elements of the operating expense. Such an examination was made with the result that many small items which were charged on the books of the company as expense of operation were eliminated as properly belonging in the construction accounts.

The total disbursements for the year 1913 approximated the sum of \$2,066.31. Of this amount some \$867 appears to have been expended in construction, thus leaving approximately \$1,200 for operation of the system.

The cost of operation per subscriber is, therefore, slightly in excess of nine dollars. This figure is perhaps somewhat higher than the normal operating cost of telephone systems of the size and character of the one under consideration. The company has 54 miles of wire line, giving service to 132 substations. The system is evidently a very compact one. It would naturally be concluded that in a situation of this kind the operating costs would run slightly below rather than slightly above normal. It may be said, how-

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ever, that the company affords exchange with the Plymouth Telephone Company for which it pays the latter 15 cents per 'phone per month. For this service no additional charge is made to the subscriber.

Deducting the operating expenses from the gross earnings the surplus available for interest and depreciation appears to be \$548.70, a sum scarcely sufficient to meet a fair allowance for those items. If the rate for two or more party service were raised 15 cents per month the resulting increase in gross earnings would be \$237.60 — there being at the present time no subscriber taking single party service. This would increase the allowance for depreciation and interest to \$786.30, which is approximately 13 per cent. on the amount of the investment, or a 6 per cent. allowance for depreciation and 7 per cent. for interest. This would seem to adequately meet the requirements of the company.

Some difficulty has been experienced by the company in enforcing the prompt payment of bills, and a desire was expressed at the hearing that a discount provision be made in the rates established in order to make it an object to a customer to pay promptly. This suggestion is in accordance with the practice of telephone companies in general, and with the previous holdings of this Commission.

It is, therefore, ordered, That the applicant herein, the Cascade Telephone Company, be authorized to discontinue the rates now in force and to substitute therefor the following schedule.

\$1.25 per month for two or more party 'phone.

\$1.50 per month for single party 'phone.

Bills to be paid quarterly in advance on the first of January, April, July and October, and a discount of 10 cents per 'phone per month, to be granted subscribers paying within one month.

Dated as Madison, Wisconsin, this fifth day of August, 1914.

IN THE MATTER OF THE PROPOSED EXTENSION OF THE CORNELL
TELEPHONE COMPANY IN THE TOWN OF HOLCOMBE, CHIP-
PEWA COUNTY, WISCONSIN.

Decided August 7, 1914.

**Public Convenience and Necessity—Extension of Lines for Local Service
—Certificate of Public Convenience and Necessity a Con-
dition Precedent to Furnishing of Local Service
by Company Operating Only Toll
Station in Territory in Question.**

The Cornell Telephone Company having filed notice of its intention to extend its telephone line for the purpose of giving local service in the town of Holcombe, the Chippewa County Telephone Company and the N. H. Deuel Telephone Company, operating in Holcombe, filed their objections.

It appeared that two extensions of the Cornell company's line had already been made under a misapprehension that the service given was in an incorporated village, and that, upon the discovery being made that the village was not incorporated, service to the three subscribers who had been connected was discontinued to permit the company to comply with the requirements of the law. It further appeared that one of the extensions had been made primarily for the purpose of carrying the company's toll line.

Held: That the fact that the extension was made for the purpose of furnishing toll service does not make permissible the giving of local service from lines attached thereto unless the requirements of the law relating to local extensions are complied with first.

Invasion of Occupied Field—Adequacy of Existing Service.

The Commission found that the Chippewa County company had lines in operation along both of the highways upon which the Cornell company had extended its lines, that there was no public demand for local service that the Chippewa County company could not meet, and that such demand for additional service to Chippewa Falls as existed in Holcombe could readily be met by a physical connection between the lines of the Cornell company and those of the Chippewa County company.

Held: That public convenience and necessity did not require the extensions made by the Cornell company;

That all local service given from such extensions should be permanently discontinued.

*Ordered, accordingly.**

* Editor's headnote.

OPINION AND DECISION.

On July 8, 1914, the Cornell Telephone Company gave notice to this Commission of a proposed extension of its line in the town of Holcombe, Chippewa County. Notice was served as provided by law upon the other companies operating in that town, namely, the Chippewa County Telephone Company of Chippewa Falls, the Cadott Telephone Company of Cadott, the N. H. Deuel Telephone Company of Arnold and the Rusk County Telephone Company of Ladysmith. Objection to the extension was made by the Chippewa County Telephone Company and the N. H. Deuel Telephone Company, and a hearing was held at Chippewa Falls, July 27, 1914, to ascertain whether or not public convenience and necessity would be best subserved by allowing the extension to be made. The appearances were: For the Cornell Telephone Company, *P. J. Skolsky* and *J. F. Krizek*; for the Chippewa County Telephone Company, *T. J. Connor*; for the Cadott Telephone Company, *Ole Jensen*; for the N. H. Deuel Telephone Company, *N. H. Deuel*.

It developed at the hearing that the extensions had already been made under the misapprehension that the service given was in an incorporated village, and, upon the discovery being made that the village was not incorporated, service to the three subscribers who had been connected was discontinued to permit the Cornell Telephone Company to comply with the requirements of the law. The company was giving service to a few subscribers in the village prior to July 10, 1913, the day on which Section 1797m-74 of the statutes went into effect. The terminus of the line at that time was at the corner of Main and Irvine Streets. Subsequently, the company built the extensions under consideration, one requiring the setting of three poles, running easterly toward the depot along Irvine Street, and the other requiring the setting of ten poles, running northerly along Main Street. Both of these extensions paralleled existing lines of the Chippewa County Telephone Company. It may be said in passing that the Irvine Street extension was

made primarily to carry the toll line of the company, the toll station having been changed from the Holcombe Hotel on Main Street to the Folby Hotel on Irvine Street. That the poles were set for toll purposes, however, would not make permissible the giving of local telephone service from wires attached thereto, unless the requirements of the law relating to local extensions were complied with first.

The village of Holcombe is a small community of perhaps three or four hundred inhabitants, having stores, hotels and other business enterprises. It can readily be understood that one not residing in the community and unfamiliar with the village affairs, should assume that the place was incorporated. The manager of the Cornell Telephone Company, it appears, is also manager of the Wisconsin Telephone Company exchange at Chippewa Falls. The fact that he was not thoroughly acquainted with the legal status of the community and that he did make some inquiry to ascertain whether or not the place was incorporated, goes only to show that the violation of the law was not wilful and to that extent pardonable. It does not, however, remove the responsibility resting upon the Commission to ascertain whether or not the circumstances are such as would have necessitated a finding adverse to the construction of the lines had the proper legal steps been taken in the first place, and if it is found that they are, to require the removal of the lines constructed. We are forced to conclude that the facts in this case show that public convenience and necessity do not require the extensions made by the Cornell Telephone Company.

The evidence shows that the Chippewa County Telephone Company has lines in operation along both of the highways upon which these extensions were made. It shows that the Holcombe Mercantile Company, to reach which the longer of the two extensions was installed, was already a subscriber of the Chippewa County Telephone Company. It does not show that there was any public demand for service that the latter company could not have met. Such demand for additional service in Chippewa Falls as the evidence

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shows to have existed in Holcombe could have readily been met by physical connection between the two companies.

It is, therefore, ordered, That all local service given from such lines of the Cornell Telephone Company as were constructed in the town of Holcombe since July 10, 1913, be permanently discontinued.

Dated at Madison, Wisconsin, this seventh day of August, 1914.

In re INVESTIGATION ON MOTION OF THE COMMISSION OF STANDARDS FOR TELEPHONE SERVICE IN THE STATE OF WISCONSIN.

Dated August 13, 1914.

Standards for Telephone Service Established.

OPINION AND DECISION.

The Wisconsin law requires all public utilities to furnish adequate service and empowers the Railroad Commission to formulate standards of adequate service. Believing that the establishment of standards for telephone service would be of material aid in bettering such service throughout the State, an investigation of the matter was instituted by the Commission. A hearing was held at Madison on September 23, 1913, at which tentative rules were discussed. These tentative rules were revised in the light of the testimony and printed, and were sent with notice of a further hearing to all telephone utilities in the State and other interested parties. The second hearing was held at Madison on February 12, 1914.

The following rules and explanations are the result of careful study and have been formulated after full consideration of the testimony offered, and subsequent correspondence with reference thereto. In our judgment they define a quality of service which will be economical and at the same time reasonably adequate for the public. We realize that it is impossible in the present stage of telephonic development to establish general rules which will

effectively cover every contingency, and if rigid adherence to the rules herein prescribed should in any particular case result in hardship to the company or higher rates to the consumer without a commensurate betterment in service, application should be made to the Commission for a modification, giving reasons therefor. The Commission through its inspectors will require full compliance with the rules except in cases where special modifications are secured upon individual application.

RULE 1. Equipment and lines shall be so constructed and maintained as to eliminate all cross-talk and noise, which unreasonably interferes with the transmission of messages for ordinary distances.

Objectionable noise and poor transmission frequently occur where ground return lines are in service or where the lines are in close proximity to power lines. Present day construction tends to eliminate these conditions, and should be followed wherever practicable. When lines are reconstructed, or when new lines are built, metallic circuits should be provided, except in cases where adequate service can be rendered by less costly construction. Existing grounded lines should be replaced by full metallic circuits, if adequate service in any particular case demands such a change.

RULE 2. The number of subscribers on any one line shall not be greater than that consistent with adequate service.

All new construction should comply with this requirement. Where existing lines are overloaded, steps should be taken as soon as practicable to rectify this condition by increasing the number of lines. Under ordinary circumstances rural lines should be limited to ten or twelve subscribers, but in special cases a larger number may be justified. Where the use of the service and the revenue derived therefrom warrants such action, the number of subscribers on any one line should be reduced materially below this maximum. Service of a higher class should be rendered to

subscribers who demand and who are willing to pay the additional cost thereof.

RULE 3. *Each utility, furnishing service alone or jointly with other utilities in two or more cities, villages or other exchange points, shall provide at least one line for through traffic between such points, along which few if any subscribers' instruments are installed.*

Where through traffic is light, it may be permissible to install instruments for local service along through lines, but between more important exchange points such installations should not be made. In special cases, toll stations may be installed along through lines until such time as the traffic warrants additional lines. This rule should be adhered to whether the through traffic is handled on a toll basis or is included in the regular charges for service.

RULE 4. *Each utility shall maintain in proper condition the lines, instruments and other equipment used on its system and shall make such tests and inspections as are necessary.*

Inasmuch as the nature of these tests and inspections largely depends upon the kind of system, the character of protective devices and the interference from storms or other external sources usually experienced, it is undesirable to specify their exact nature and extent. The Commission, through its inspectors, will outline the character of tests and inspections necessary in particular cases upon request of the utility, and will make such suggestions as are deemed expedient. Signaling equipment, switchboard cords and other equipment requiring frequent attention should be kept in first class condition at all times. When permanent repairs cannot be immediately effected, such temporary repairs should be made as are necessary to insure a prompt resumption of service, pending the completion of the permanent work.

RULE 5. *Each exchange shall have sufficient switchboard capacity and a sufficient operating force to handle the traffic*

at all times with reasonable facility. Traffic studies shall be made and recorded, of such extent and frequency as to demonstrate to the Commission that sufficient equipment is in use and that an adequate operating force is employed.

At exchanges where operation is not continuous, provision should be made for handling emergency calls during such hours as the exchange is closed for regular service.

Traffic studies should include the number of calls made each hour, the hour of heaviest traffic, the variation of these conditions with the day of the week or month or with seasonal conditions, and the distribution of calls among operators.

RULE 6. *Reasonable provision shall be made against the failure of lighting or power service, fires and storms, sudden increases in traffic, the illness of operators, or other emergencies which would seriously impair the service if not promptly met.*

An exchange should not be left in the sole charge of one operator unless some other person capable of operating the exchange is within reasonable calling distance. Provision should be made for changing to another system of ringing and for a reserve source of lighting instantly available for the operating room. A reasonable supply of repair parts and line supplies always should be on hand.

RULE 7. *At exchanges serving five hundred or more subscribers 94 per cent. of the calls should be answered within ten seconds or less. At all other regular exchanges 90 per cent. of the calls should be answered within ten seconds or less. At small exchanges operated in connection with other work, slower service may be adequate. Calls shall be carefully supervised and parties disconnected promptly after conversations are completed.*

Exchanges now operated in connection with other work should be provided with operators devoting their entire time to the switchboard whenever such a change is justified by the traffic and the revenue derived therefrom.

RULE 8. *Suitable rules and instructions shall be adopted covering the phraseology and methods to be employed by operators in handling regular and special calls.*

Speed, accuracy and reliability are of vital importance in telephonic efficiency, and a definite plan of operation is necessary to establish these qualities of service. Patrons should be required to call by number wherever practicable. In order to avoid giving the wrong number it is advisable for operators to repeat the number to the subscriber before making the connection. Telephone courtesy is extremely important in stimulating the growth of the business and in eliminating dissatisfaction and complaints. It should be required of all employees and generally encouraged. Employees must not "listen in" on lines except when it is an operating necessity. Care must be taken to avoid diverting business from a subscriber to his competitors, or discriminating between subscribers in the attention given their calls.

RULE 9. *Directories in which 1,500 or more subscribers are listed shall be revised at least semi-annually. All other directories shall be revised at least once each year. All directories shall be dated.*

This rule is general and will apply under ordinary conditions. However, in cases where the changes to be made are so few as to become practically negligible, it may be unnecessary to revise the directory within the time limit. In some instances it may be desirable to make revisions more frequently than specified in the rule. The matter is one which should be governed by the number of changes which are necessary.

RULE 10. *Directories shall contain such instructions and rules governing local and toll service and methods of payment as may be necessary to inform subscribers of their rights and obligations.*

It may be found desirable to publish the Commission's rules, illustrations showing the proper method of speaking

into transmitters, suggestions as to enunciation, time and method of payment for service, and other information, varying with different exchanges, which will tend to promote business efficiency and precision of operation.

RULE 11. Reasonable efforts shall be made to eliminate interruptions and irregularities, and to correct them promptly when they occur. Records shall be kept of all complaints of irregularities in the service, showing the day and time at which the trouble is reported, the nature of the trouble, its duration and final disposition.

Trouble records are useful in locating defects in equipment and operation, since in this way chronic troubles may be distinguished from occasional complaints due to exceptional circumstances. For this purpose the preservation of the ordinary slips filled out when the trouble is reported and the notes of the trouble man or wire chief with reference thereto will be sufficient. Subscribers should be given instructions as to how and to whom they should report difficulties, and the person designated to receive complaints should be readily accessible and should have time and authority to properly remedy them. Employees should be encouraged to report all complaints, irregularities and criticisms. Patrons should be requested to report trouble in sufficient detail so that an accurate record of the nature of the complaint can be made. The co-operation of the public in promoting good service should be encouraged in the matter of tree trimming, in refraining from monopolizing party lines and in other matters not wholly within the control of the utility.

RULE 12. The name and address of the official or employee designated to handle service matters and a copy of each new directory shall be filed with the Commission. Upon request a complete map of each telephone system shall be filed with the Commission, and a similar map shall be kept at the principal office of each utility and revised from time to time as changes in the system are made.

TOLL SERVICE.

No specific rules with regard to the adequacy of toll service are prescribed at this time, but the following suggestions are offered. Toll service should be promptly routed so as to be most efficient and to secure justice to the telephone companies where more than one utility is involved. In general, each utility should test all toll circuits early each morning and after storms in order that trouble may be promptly eliminated. On joint lines, or when one utility uses the lines of another utility, trouble on circuits should be promptly reported to the utility responsible for the maintenance of the line. Accurate and convenient devices should be installed in order that toll charges may be just, and that the service may not be unnecessarily delayed on this account. The tone of voice used by operators is very important, particularly for toll service. They should cultivate not only a distinct articulation, but low tones and pleasing voice. This would aid materially in giving satisfactory service at highest efficiency. A record of the condition of long distance circuits entering each exchange should be kept for the convenience of the utilities in properly maintaining their lines, and for the Commission's information.

It is, therefore, ordered, That all telephone utilities, operating in the State of Wisconsin, hereafter comply with the requirements of the rules and regulations enumerated above. Sixty days is deemed a sufficient time within which to comply with this order.

Dated at Madison, Wisconsin, this thirteenth day of August, 1914, A. D.

IN THE MATTER OF A PROPOSED EXTENSION OF THE LINE OF
THE GRANGE HALL FARMERS' TELEPHONE COMPANY IN
THE TOWN OF ROCK ELM, PIERCE COUNTY, WISCONSIN.

Decided August 13, 1914.

Extension of Lines Without Consent of the Commission—Duplication of Facilities — Discontinuance of Service Over Duplicating Line Ordered.

It appeared that the Grange Hall Farmers' Telephone Company had given notice to the Commission of a proposed extension of its line in the

town of Rock Elm. The Highland Telephone Company filed its objection to the extension. In spite of the fact that the matter was before the Commission for determination, the Grange Hall company proceeded to build its line and paralleled for a distance of approximately 3 miles the line of the Highland company, six of whose subscribers discontinued Highland service in favor of that of the Grange Hall company.

The Commission found that the proposed extension would not have been permitted had the proper legal steps been taken before the line was built.

Ordered, That the Grange Hall Farmers' Telephone Company and the individual patrons of the new line permanently discontinue service over that line within two weeks from the date of the order.*

OPINION AND DECISION.

On April 21, 1914, the Grange Hall Farmers' Telephone Company gave notice to this Commission, as required by law, of a proposed extension of its line in the town of Rock Elm, Wisconsin. The Highland Telephone Company of Elmwood notified the Commission of its objection to the extension, and a hearing was held on the matter at Elmwood May 14, 1914, at which the Grange Hall Farmers' Telephone Company was represented by *Frank Wild* and *Bert Collett*, and the Highland Telephone Company by *John Schwebach* and *Joseph Johnson*.

There are certain occurrences antecedent to the filing of the formal notice that occasioned this hearing that are necessary to a complete understanding of the case. The first notice of the extension was served upon the Commission by the Grange Hall Farmers' Telephone Company on December 13, 1913. In the letter accompanying the notice the secretary of the Grange Hall company said: "This extension does not interfere with any other company, as it starts from our own central and runs into the country to no place of business." When the twenty-day period fixed by the statute had elapsed, the Commission relying upon the fact that no objection to the extension had been filed and also upon the above quoted statement of the Grange Hall company, wrote the latter company that it

* Editor's headnote.

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was authorized to proceed. In March, 1914, complaint was received by the Commission from the Highland Telephone Company that the Grange Hall company was proceeding with the hauling of poles along the route of the Highland company's line and that no notice of any proposed extension had ever been served upon the Highland Telephone Company. The Commission sent a member of its engineering staff to investigate the situation, and his report showed that the new line would parallel the Highland line for a distance of fully three miles. Upon receipt of this report the Commission wrote the Grange Hall Farmers' Telephone Company that inasmuch as it had not complied with the plain requirement of the law in the matter of serving written notice upon the Highland Telephone Company the proceedings instituted in December, 1913, were void and a new notice would have to be filed. Such notice, as above stated, was served upon the Commission on April 21, 1914, and the matter was set for hearing on May 6. At the request of the Grange Hall company, the hearing was postponed until May 14.

At the hearing then held it developed that the construction of the new line had proceeded to completion in spite of the fact that the matter was before the Commission for determination; and the actual connecting of telephones had taken place between the date of notice and the date of the hearing. Nineteen subscribers were attached to the new line, and six of these had previously been subscribers of the Highland Telephone Company and had discontinued its service in favor of that of the Grange Hall company.

Under these circumstances, the construction of the line was clearly an illegal act. It appears therefore that the Grange Hall Farmers' Telephone Company failed to comply with the law in that it did not give written notice to the Highland Telephone Company in December of its intention to construct; that it misled the Commission by stating that the proposed extension would not affect any other company, whereas, it did as a matter of fact parallel the line of the Highland Telephone Company and takes away

six subscribers from that company; and that upon being notified of its failure to perfect its legal right and being instructed to file a new notice the company filed the notice but proceeded to build the line without waiting for a hearing or a determination of the matter by the Commission.

It was stated by the representative of the Grange Hall company that the Highland Telephone Company had had verbal notice of the proposed construction of the line, but the evidence shows that the verbal notice related to a meeting which was to be held for the purpose of discussing the telephone situation in the community; that the secretary of the Highland Telephone Company attended this meeting, but no action was taken and he had no knowledge that the construction was actually contemplated until he observed the hauling of poles early in the spring of the present year.

Although the construction of the line in question was unlawful because the conditions precedent were not complied with as required by statute, the Commission's investigation has included an inquiry into the merits of the case in order to determine whether the situation is actually such as to indicate a public need for the new line. Rock Elm is located seven or eight miles southwest of Elmwood and the Highland Telephone Company with headquarters at Elmwood has a metallic line running from Elmwood to Rock Elm and connecting at the latter point with the switchboard of the Grange Hall Farmers' Telephone Company. The latter company, in turn has a grounded line running over another highway from Rock Elm to Elmwood and connecting with the Highland switchboard at Elmwood. There is free interchange of messages between the two companies. The Highland line from Elmwood to Rock Elm runs through a community known as Farm Hill, about three or three and a half miles east of Rock Elm, and the new line of the Grange Hall company parallels the Highland line on the same highway from Farm Hill to Rock Elm. At Farm Hill the new line turns south, running for a mile into territory not reached by the Highland company. As has

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been shown, the paralleling of lines has resulted in the loss of six subscribers to the Highland company, five of whom were renters and one a stockholder of that company. The inquiry discloses, therefore, that there was no actual use for the extension such as would have warranted this Commission permitting it to be made had the situation been brought regularly before it at the time of the first application.

The controlling reason for the construction of the new line in the identical territory already occupied by the Highland Telephone Company appeared at the hearing to be a matter of rates. The rate of the Highland Telephone Company is \$12.00 a year, while the patrons of the new line expect to get their service for about \$3.00 per year. It seems that the Grange Hall Farmers' Telephone Company is a corporation owning two or more switchboards, but that it does not own the rural lines running into them. These lines, including the one involved in the present case, were built and maintained by the farmers living along them, and they pay the Grange Hall company a uniform rate of \$3.00 per telephone per year for the switching service. It does not appear clearly what the situation is as to the ownership of the rural lines or as to how the corporation known as the Grange Hall Farmers' Telephone Company is controlled. As far as operating matters are concerned, however, it is clear that the entire central office expense of each subscriber is represented by a charge of \$3.00 per year. It is the belief of the patrons of the new line that their other expenses will amount to practically nothing, it being the duty of each farmer to keep in repair the portion of line running past his farm. Thus, it was argued at the hearing, there is a difference of \$9.00 a year between the cost of the Highland Telephone Company's service and the cost of service of the new line, and this difference made it decidedly worth while for the farmers to construct a line of their own.

It has been pointed out in several decisions of this Commission that ruinous duplication of lines and service is not

to be permitted merely because the rates of existing companies are thought to be excessive. The law provides an adequate remedy for excessive rates by the filing of complaints with this Commission. But because of the conception that seems to exist in the minds of the patrons of the line here in question that the construction of the new line made them a clear saving of \$9.00 a year in telephone rental, we deem it appropriate to comment at this time upon the merits of the contention relating to rates. Experience has shown that a rate of \$12.00 per year for rural service, such as is charged by the Highland Telephone Company, is usually by no means excessive. On the other hand, it is quite plain on the face of things that the service of the new line cannot be had for \$3.00 per year per telephone. The experience of those engaged in the telephone business is uniformly to the contrary. The sum of \$3.00 covers merely the cost of switching service. Nothing is allowed for maintenance of pole and wire lines, renewal of batteries or repair of subscribers' instruments, taxes, depreciation or a return on the investment. Some of these items involve only a small outlay of money during the first few years of operation, but as time goes on and the lines become old, the maintenance items are greatly increased. Then, when the line has reached the end of its useful life and has to be replaced, a second outlay about equal to that made for construction of the original lines will be necessary. If instead of considering the immediate cost to which they will be subjected, the patrons of the new line would look far enough into the future to determine the ultimate cost, and apportion this cost over the year, they would find the expense of their service to be much more than \$3.00 per year. Probably it would be nearer \$10.00 and it might be higher, even though the minimum of maintenance cost and general expenses were incurred.

This Commission has consistently refused to permit paralleling of lines and interference with the business of other companies under circumstances similar to those existing in this case. Along the highway from Farm Hill to

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Rock Elm the residents can have, if they desire it, the service of the Highland Telephone Company, which includes free connection with all the Grange Hall lines, and this service is available at rates which are reasonable or can be made reasonable upon a complaint to the Commission. Thus, the line in question was constructed in territory in which construction could not have been permitted if the proper legal steps had been taken. In such a situation, the Commission has no alternative but to order a discontinuance of the service given by the unlawfully constructed line. Section 1797m-74 of the statutes says, "No public utility already engaged in furnishing telephone service shall install or extend any telephone exchange for furnishing local service to subscribers in any municipality where there is in operation a public utility engaged in similar service without having first served notice in writing upon the Commission and any other public utility already engaged in furnishing local service to subscribers in such municipality of the installation or extension of such exchange which it proposed to make," etc. The obvious purpose of the statute was to prevent the creation of the identical state of affairs that has arisen in this instance, namely, a wasteful duplication of telephone lines. It is the duty of the Commission to give this law effect. Section 1797m-1-2 says, speaking of the Commission, "It shall be its duty to enforce the provisions of Section 1797m-1 to 1797-109." In enforcing the provision of the statutes specified, it is no less the duty of the Commission to take steps to abate a condition that has arisen that the law is designed to prevent than it is to prevent the occurrence of that condition in the first place.

The continued existence and operation of the line in question is an act for which those concerned are liable to prosecution. It is a further duty of the Commission to report to the attorney general violation of the statute so that such prosecution may be begun.

The situation with respect to the ownership of the line in question and responsibility for its construction is not

entirely clear from the evidence, since the parties themselves did not seem to have any very definite idea on the subject. The line was built by the nineteen farmers who are using its service, but it was built with the knowledge and acquiescence, if not the actual assistance of the Grange Hall Farmers' Telephone Company, and it is the latter company that has acted for the new line in dealing with this Commission. Furthermore, the Grange Hall Farmers' Telephone Company has connected the line with its switchboard and is giving service over it. Therefore, both the Grange Hall Farmers' Telephone Company and the individuals who constructed and perhaps own the line in question would seem to be legally responsible for its construction and use.

The Grange Hall Farmers' Telephone Company and the individual patrons of the new line will be given a reasonable time in which to discontinue service over the line, but if such service is not permanently discontinued at the end of two weeks following the date of this decision, the matter will be turned over to the attorney general for prosecution.

Dated at Madison, Wisconsin, this thirteenth day of August, 1914.

FRANK WINTER *v.* LACROSSE TELEPHONE COMPANY AND WISCONSIN TELEPHONE COMPANY.

No. U — 317.

Decided August 20, 1914.

Supplemental Order as to Method of Establishing Physical Connection and Determining Joint Rates for Toll Service.

On May 14, 1913, the Commission made an order* requiring the Wisconsin Telephone Company and the LaCrosse Telephone Company to establish such physical connection between their toll systems as would be required for the furnishing of toll service to the subscribers of each company over the toll lines of the other company. Subsequently, it appearing that the companies were unable to reach an agreement as to the manner

* Printed in Commission Leaflet No. 18, at page 952.— Ed.

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of making the required connection or as to the determination and apportionment of the joint toll charges, the Commission instituted an investigation of the matters in controversy.

Temporary Connection of Existing Facilities Ordered.

As to the manner of making the required connection, the Commission was of the opinion that, in order to determine just what provision should be made to handle the traffic resulting from the connection, a temporary connection should be provided in which the existing equipment of each company should be used. Accordingly, it was

Held: That the two companies should connect three trunk circuits for the present, and, as the business required, make such further connections of circuits as would be necessary to furnish reasonably adequate toll service.

Uniform Charge for Interchange of Toll Service Rejected — Charges to be Graduated According to Distance from Exchange.

Relative to the matter of determining and apportioning the joint toll charges, the Wisconsin Telephone Company proposed that each subscriber of either company desiring service over the lines of the other company be required to pay \$6.00 per year for the right to obtain such service and, in addition thereto, the regular toll rate for each message sent or received and, in the case of subscribers of the LaCrosse Telephone Company, an additional charge of 15 cents for each message. This proposition the Commission regarded as unreasonable for the reason that the charges suggested would be prohibitive and would defeat the very purpose of the statute. In this connection, it was

Held: That, in requiring physical connection between the lines of two telephone companies, it was not the intention of the legislature indirectly to require persons desiring the facilities of both companies to become subscribers to each, but that continuity of service over two or more systems, wherever the same could be established advantageously to all parties concerned, was the primary purpose of the statute and that any arrangement by which one company would obtain an advantage over the other by acquiring the other's subscribers could not be sustained;

That, instead of a uniform charge, the arbitrary to be exacted should be graduated upon a zone basis and that each subscriber of either company desiring service over the lines of the other company should be charged for each message, in addition to the regular toll charge, 5 cents for a distance of not over 50 miles from the office of each company in LaCrosse, 10 cents for a distance of not over 100 miles from such office and 15 cents for all distances over 100 miles, all distances to be computed by air line measurement; that neither company should absorb any such additional charges but that each company should collect such

charges from its subscribers and should be liable for, and pay to, the other company the regular toll charges plus such additional charges.

An order was issued in accordance with the conclusions of the Commission.*

SUPPLEMENTAL REPORT AND ORDER.

On May 14, 1913, the Commission made and entered an order† in the above entitled case requiring the LaCrosse Telephone Company and the Wisconsin Telephone Company to make such physical connection or connections of their toll lines or systems as is required for the furnishing of toll line service to the subscribers of each company at the stations installed in their residences and places of business over the toll lines of the other company; and further apportioning the expense of making such physical connection or connections and the subsequent maintenance of the same equally between the said companies. Thirty days were given the companies within which to comply with the terms of the order (12 W. R. C. R. 748).

Subsequently, it appeared that the companies were unable to determine and agree upon the manner of the physical connection provided in the order or the joint toll charges to be made or the apportionment of the toll charges. Thereupon notice was given to all parties that the Commission would investigate the matters in controversy on the twenty-second day of July, 1913, and make such order as was required in the premises.

Pursuant to stipulation of the parties, the hearing was continued until August 13, 1913, at which time the petitioner appeared in his own behalf; the LaCrosse company by *George F. Gordon*, its attorney; and the Wisconsin Telephone Company by *Edwin S. Mack* and *L. G. Richardson*, its attorneys.

Upon the hearing considerable testimony was offered, most of which consisted of opinions and was of little value in determining the questions at issue. This was natural,

* Editor's headnote.

† Printed in Commission Leaflet No. 18, at page 952.—Ed.

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as in the absence of any experience showing the effects of a physical connection of lines upon the business of the competing companies, the opinions given could be only speculative. Under the circumstances any order made must necessarily be experimental and subject to revision or rescission at any time either company may appear to suffer injury from the arrangement.

Taking up first the question of the manner of connection, we find that the Wisconsin Telephone Company submitted quite elaborate plans and specifications to the LaCrosse Telephone Company and to the Commission for a permanent connection between the switchboards of the two companies. The LaCrosse Telephone Company rejected the plans, presumably on the ground that as the order was necessarily experimental, the cost of a permanent connection at this time was not warranted. It is probable that the plans and specifications provide greater facilities than a liberal estimate of the traffic to be expected would justify. The meager data at hand does not indicate that such specified construction work will be presently required, and in order to determine just what provision should be made to handle the traffic resulting from a physical connection of the systems, it would seem wise to provide a temporary connection, using the present switchboard equipment and spare cable pairs in the present distributing cables of each company, by means of which it will be possible to observe the traffic created.

Information obtained by a member of the engineering staff of the Commission shows that there are at present 10 incoming and 20 outgoing ring-down circuits available on the toll board of the Wisconsin Telephone Company, and 6 ring-down circuits available on the toll board of the LaCrosse Telephone Company. The following drawing shows the location of the respective exchanges and also the underground cables in which the spare pairs are located and which terminate on adjacent distributing poles in the alley at the rear of the Wisconsin Telephone Company's office. The LaCrosse Telephone Company's cable No. 5 con-

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tains 15 available pairs, and that of the Wisconsin Telephone Company contains 10 or more, which can easily be connected by stringing twisted pair distributing wire a distance of approximately 35 feet from one terminal pole to the other. These connections from board to board could probably be made within a day's time and with very little expense. The specifications submitted by the Wisconsin Telephone Company for temporary trunking facilities suggest a similar way of handling the proposition, which, however, would be more expensive. It also provides a greater number of trunks than it would seem reasonable to provide at present. Since it would require only a few hours' time to connect an additional circuit when found necessary, and as it is probable that the development of traffic will be very slow, it seems advisable that three trunk circuits be connected for the present, as follows:

- 1 Wisconsin Telephone Company toll to LaCrosse toll.
- 2 Wisconsin Telephone Company toll to LaCrosse local.
- 3 Wisconsin Telephone Company local to LaCrosse toll.

All calls will be "ticketed" for the purpose of adjusting charges. This record will provide a means of checking traffic over these trunks at any time, and such a record, when traffic becomes somewhat settled, will afford a means of determining what should be provided in the permanent construction.

Relative to the question of joint tolls and the division of same, the Wisconsin Telephone Company submits for consideration the following proposition:

"Each subscriber to the exchange of the LaCrosse Telephone Company who wishes service over the lines of the Wisconsin Telephone Company shall subscribe for such service and pay a charge of \$6.00 per year for the right to obtain such service, and in addition thereto pay the regular toll charge of said Wisconsin Telephone Company for each toll message plus an additional charge of 15 cents for each message sent or received by him. Each subscriber of the Wisconsin Telephone Company who wishes service over the line of the LaCrosse Telephone Company shall subscribe for such service and pay a charge of \$6.00 per year for the right to obtain such service, and in addition thereto pay the regular toll charge of said LaCrosse Telephone Company for each toll message

sent or received by him. The division of the amount of the aforesaid charges between the two companies can be determined after the basis of such charges has been agreed on."

The proposition in our judgment is unreasonable. The charges suggested would be prohibitive of the services proposed and defeat the very purpose of the statute. In requiring physical connection between lines of telephone companies it was not the intention of the legislature to indirectly require the public desiring the facilities of both telephone companies to become subscribers to each. Continuity of service over two or more systems wherever the same could be established advantageously to all parties concerned, was the primary purpose of the act. Of course the property and business of each company must be protected. Any arrangement by which one company would obtain an advantage over the other by acquiring the other's subscribers could not be sustained.

In the opinion upon the original hearing it was said:

"In the peculiar situation found in the instant case, it is possible to prescribe terms and conditions which will preserve the interests of the utilities, respectively, after the connection has been made. The subscriber of one company desiring toll service over the lines of the other company must pay in addition to the rate charged the patrons of the latter company a reasonable compensation for the additional service. Neither company will be permitted to absorb such additional charge, but the same must be paid by the patrons of either company using the toll lines of the connecting company. This will not result in any discrimination between subscribers of the same exchange, but will result in a just and necessary discrimination between the subscribers of the different exchanges. A subscriber who has not installed the telephones of both exchanges is not entitled to toll service of both exchanges without paying an additional charge to the exchange with which he is not connected when desiring to use its toll line facilities."

There has been nothing presented upon the supplemental hearing now under consideration which has changed our views as to the position thus taken. These views are reinforced by a decision of the Canadian Commission rendered in a case presenting a situation somewhat similar to the one presented in this case, *Rural Telephone Companies v.*

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Bell Telephone Company,* 12 Can. Ry. Cases, 319. In the Canadian case a number of rural telephone companies applied for physical connection of their lines with the toll lines of the Bell Telephone Company. It appears that in the village of Ingersoll the Bell company's local exchange was in competition with those of the rural companies. The question before the Commission was the furnishing of toll service to the rural companies without decreasing the number of subscribers of the Bell company in Ingersoll. Speaking of the situation of the Bell company in the matter, the Commission said:

"We have then this company with its capital invested furnishing a service to its subscribers; we have the Ingersoll company gradually encroaching upon what is said to have been the preserve of the Bell Telephone Company, until to-day there are in Ingersoll twice as many subscribers to the Ingersoll system as there are to the Bell system, but they are without the long distance connection. That long distance connection is the sheet anchor of the Bell Telephone Company. Without it I feel perfectly satisfied that there would not be the 250 subscribers that they have in Ingersoll. It is the local company that has the prestige. It is the local business men actively promoting concerns of this kind that make them successful, make them aggressive and get two or three times the subscribers that the outside company is able to get. The condition existing in Ingersoll no doubt will grow up elsewhere. It has grown up in some places. Now while it is our duty, if we can, to give the subscribers to these rural exchanges long distance connection over the lines of the Bell Telephone Company, and while Parliament by putting this law on the book intended that we should act upon it, the question that is presented to us is under what terms are we able to relieve this tension without being unfair to either the subscribers to the Ingersoll Telephone Company, or the stockholders of the Bell Telephone Company."

The Commission required the subscribers of the rural exchanges to pay 15 cents long distance toll in addition to the regular long distance tariff of the Bell company from the point of exchange or connection with the local company to the point of destination.

Under the conditions existing in this State we are of the opinion that instead of a uniform charge the arbitrary to

* IV Commission Telephone Cases, 823.—Ed.

be exacted should be graduated upon a zone basis, and that, accordingly, for a distance of not over 50 miles from the office of each company in the city of LaCrosse, the arbitrary should be 5 cents for a distance of 50 miles and not over 100 miles, 10 cents; and for all distances over 100 miles, 15 cents. If this tariff, after trial, should not prove satisfactory, or result in detriment to either company, the same will be changed by the Commission upon application of either company.

Now, therefore, it is ordered, That the LaCrosse Telephone Company and the Wisconsin Telephone Company connect three trunk circuits for the present as above indicated, and, as the business requires, make such further connections of circuits as is necessary to furnish reasonably adequate and efficient toll line service.

It is further ordered, That each subscriber of the Wisconsin Telephone Company desiring service over the toll lines of the LaCrosse Telephone Company shall be charged for each message, in addition to the regular charge of the LaCrosse Telephone Company, as follows:

1. For all distances of not over 50 miles from the office of the LaCrosse Telephone Company, 5 cents; for all distances over 50 miles and not over 100 miles from such office, 10 cents, and for all distances over 100 miles from such office, 15 cents. All distances shall be measured by air line.

It is further ordered, That each subscriber of the LaCrosse Telephone Company desiring service over the toll lines of the Wisconsin Telephone Company shall be charged for each message, in addition to the regular charge of the Wisconsin Telephone Company, as follows:

2. For all distances of not over 50 miles from the office of the Wisconsin Telephone Company, 5 cents; for all distances over 50 miles and not over 100 miles from such office, 10 cents, and for all distances over 100 miles from such office, 15 cents. All distances shall be measured by air line.

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3. Neither of the companies shall absorb any such additional charges, but shall collect the same from its subscribers, but each of the companies shall be liable to the other and shall pay to the other the long distance tariff toll plus such additional charge.

If this division of tolls, after a fair trial, shall be found to be inequitable, and the companies cannot agree upon a proper division of the tolls, the Commission will, by supplemental order, establish such division.

Ten days is deemed a reasonable time within which to comply with this order.

Dated at Madison, Wisconsin, this twentieth day of August, A. D., 1914.

INTERSTATE COMMERCE COMMISSION.

CONFERENCE RULINGS AFFECTING TELEPHONE AND TELEGRAPH COMPANIES.

Issued June 1, 1914.

Conference Ruling No. 410.

Dated April 8, 1913.

Exchange of Passes with Wireless Telegraph Companies.

It is the view of the Commission that passes and franks may lawfully be exchanged between wireless telegraph companies and other common carriers subject to the act. (See Ruling 394.)*

Conference Ruling No. 420.

Dated June 3, 1913.

Jurisdiction of the Commission Over Telephone Companies in Porto Rico.

Held: That it is the view of the Commission that it has no jurisdiction over the service and rates of telephone companies the lines of which are wholly within Porto Rico.

Conference Ruling No. 460.

Dated April 13, 1914.

Practice of Returning to Patrons Original Telegrams or Cablegrams Prohibited.

Held: That the practice by telegraph and cable companies of returning to patrons the original telegrams or cablegrams in support of their bills is unlawful. Such documents must be retained in conformity with the regulations of the Commission governing the destruction of records of telephone, telegraph and cable companies.†

* III Commission Telephone Cases, 132.—Ed.

† These regulations are printed in Commission Leaflet No. 27 at page 228.—Ed.

PART II.
COMMISSION ORDERS, RULINGS AND DECISIONS
OF INTEREST TO TELEPHONE AND TELE-
GRAPH COMPANIES.

(NOTE.— *Owing to lack of space, only summary statements of many of the decisions involving points of interest are printed in this Leaflet.*— ED.)

CALIFORNIA.

Railroad Commission.

TOWN OF ANTIOCH *v.* PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 400—Decision No. 1655.

*Decided July 6, 1914.**

Reasonable Rates for Electric Service Prescribed.

Complainant alleging that rates of respondent for electric energy supplied consumers in the town of Antioch are unjust and exorbitant, petitions the Commission to establish just and reasonable rates for the different classes of service.

Held, After a thorough analysis of the various elements entering into the basis upon which equitable rates may be established and a thorough research into cost of producing and distributing electric energy, which cost includes the establishment of proper amounts covering overhead expenditures, depreciation annuity, development cost, etc., and basing its order on the conclusions reached therein, just and reasonable rates are prescribed. These rates include a top rate of 7 cents per kilowatt hour for first 20 kilowatt hours per month with a minimum of \$1.00, for general lighting purposes; $3\frac{3}{4}$ cents per kilowatt hour for street lighting purposes; 7 cents per kilowatt hour for first 50 kilowatt hours per horsepower per month and graduating to 1 cent for over 1,000 kilowatt hours per horsepower per month for power purposes, with a minimum of \$1.00 per horsepower per month up to 10 horsepower and 75 cents per horsepower per month for all over 10 horsepower; rates to become effective within twenty days.

Held, That in establishing the rate to be charged for electric energy sold in Antioch, the Commission will divide the cost into two parts, one

* Application for rehearing denied August 15, 1914.— Ed.

being the cost of electric energy delivered at the gates of Antioch and the other the cost of local distribution. These costs are separately determined.

Reproduction Value Not Sole Basis for Determining Rate of Return.

Held, After review of various authorities bearing upon the subject of reproduction value as a basis of return that there is no foundation for the claim that the Commission must confine itself to the estimated reproduction value new; that if a utility has been kept up to a 100 per cent. efficiency and a proper depreciation fund maintained, and the estimate does not differ materially from the actual cost, such a basis will have considerable weight, but if the utility has not maintained its system in first-class condition, paying out in dividends money that should have been used for this purpose, a rate based solely upon the cost to reproduce such system new would be extremely unfair to the consumers. Likewise, if such property originally cost an amount, honestly and wisely expended, considerably in excess of what it would now cost to reproduce it, the establishment of a rate upon estimated reproduction cost would be equally unfair to the utility. It is unfair to base a return entirely upon a depreciated reproduction value, such depreciation being computed from the average age of the component parts of the system, which, though in use for several years, are still equal to 100 per cent. efficiency.

Commission Not Committed to Any One Theory in Determining Fair Value of a Utility.

Held, That though the Commission is not committed to any one theory in determining the fair value of a utility for rate fixing purposes, and will consider all the elements suggested by the Supreme Court of the United States, giving to each element its fair weight, considerable weight will be given to the money honestly and wisely invested in the property and in building up the business.

Going Value Considered When Not Offset by Other Equitable Considerations.

Held, As previously determined, the Commission will consider "going value" or "development cost" when such items are not offset by other equitable considerations, as appear in the present case, but only little weight will be given to hypothetical estimates when the actual expenditures are available.

Rates Should be Sufficient for Establishment of Depreciation Fund and Allowance for Obsolescence.

Held, That a utility has a right to look to its consumers for the establishment of a proper depreciation fund; that the annual amount to be set aside for such fund should be based upon the average natural life

of the different classes of material, with an allowance for salvage, and likewise an allowance for obsolescence and inadequacy; and that the interest on the depreciation fund should be retained therein and not diverted to other channels.

Allowance for Overhead Expenditures.

Held, After a thorough analysis of defendant's construction costs, that 12 per cent. is a reasonable allowance for overhead expenditures on the facts of this case.

Fair Rate of Return.

Held, That a rate of 8 per cent. is amply sufficient to enable defendant to secure the capital which it needs for construction purposes, that it will yield a liberal margin over the cost of money and that it is a fair rate of return to allow in this case.

Power of Government to Impose Conditions in Advance on Any Business Requiring Governmental Sanction.

That though a governmental agency has the power to impose conditions in advance on any business requiring governmental sanction to be carried on, and on the acceptance of such conditions depends their right to do business; such governmental agency cannot impose added conditions upon such a concern already sanctioned to do business, which has assumed all obligations required by law at the time of the initiation of its enterprise, excepting those conditions authorized under the police power of the State; that the people should impose conditions at the time of granting privileges and not wait, as has previously been the case, with the expectation of effecting such impositions at a later date, which action is the only method of escape from the payment of rates on public gifts and excessive unearned increment.

Distinction Between Term "Value" as Used in Rate Fixing Inquiries and as a Commercial Term.

That value, as that term is used in rate fixing inquiries, is entirely foreign to value as a commercial term, the latter being based entirely on the returns and the former found for the purposes of establishing a return; that value for rate fixing purposes cannot be fixed by rules of general application, and that no one condition can be controlling in determining the fair amount on which an earning shall be allowed.

Concurring Opinion of Commissioner Eshleman.

While generally concurring in the opinion as expressed by Commissioner Thelen, I do not agree upon the doctrine of agency suggested therein as one reason why the original cost should be given great weight.*

* Syllabus prepared by the Commission.

IN THE MATTER OF THE APPLICATION OF PASADENA PARK IMPROVEMENT COMPANY FOR AUTHORITY TO TRANSFER ITS WATER SYSTEM TO PASADENA CONSOLIDATED WATER COMPANY, AND OF PASADENA CONSOLIDATED WATER COMPANY TO SUPPLY CONSUMERS OF WATER IN THE TERRITORY HERETOFORE SUPPLIED BY PASADENA PARK IMPROVEMENT COMPANY, AND TO CHARGE SAID CONSUMERS THE REGULAR RATES NOW CHARGED THE OTHER CONSUMERS ON THE SYSTEM OF PASADENA CONSOLIDATED WATER COMPANY.

Application No. 1180—Decision No. 1662.

Decided July 9, 1914.

Gratuitous Transfer of Water System Authorized—Regular Rates of Donee Company to be Effective—Donee Not to Urge Right to a Return upon Value of Property Donated.

Pasadena Park Improvement Company authorized to transfer gratis, to the Pasadena Consolidated Water Company, its water system serving the district of Pasadena Heights Tract, and the latter company authorized to serve consumers in this district, and to place into effect October 1, 1914, its regular meter rates in lieu of the flat rates now in effect, provided that the latter company shall not urge its right to a return upon the value of the property donated by the Pasadena Park Improvement Company.*

CITY OF MONTEREY *v.* COAST VALLEYS GAS AND ELECTRIC COMPANY.

Case No. 499—Decision No. 1697.

Decided July 30, 1914.

Rehearing Denied—Refusal by Commission to Modify Language Used in Previous Order.

Defendant, contending that the valuation submitted by its own engineers was not given sufficient consideration, and protesting against the percentages allowed for overhead expenses, petitions for a rehearing in the above entitled case.

Held: Confirming the percentages used and the statements made in the original decision that defendant's valuation was so grossly inflated as to entitle it to no more consideration than was originally accorded it, application for rehearing denied.

* Syllabus prepared by the Commission.

REPORT.

ESHLEMAN, *Commissioner*:

On June 30, 1914, this Commission rendered its decision* in the above entitled case and an order was entered establishing certain specified rates to be charged by the defendant company. The rehearing was asked in a petition filed on July 18 on various grounds specified therein. Many of the grounds specified in the application do not need comment, but some are of sufficient importance to require a review.

First taking up the statement on Page 4 of the petition that Mr. Millard's examination was not made in a hasty manner and that he spent as much time in Monterey as did Mr. Kelley. The best evidence on this point is the report itself, which presents no details, and which is referred to in the letter of transmittal as a "general examination of the property." The duration of Mr. Kelley's stay in Monterey is no indication of the time expended on this valuation. Both Mr. Kelley and Mr. Hoar spent the better part of a month on it—Mr. Kelley in his preparation of unit costs, etc., and later this department in comparing the various estimates.

It appears that Mr. Millard made no effort to obtain the local costs of construction, or even compare them with his estimates based on other valuations.

Petitioner, on Page 5, refers to the scant weight given this report by the Commission, and the fact that since both these appraisals check quite closely, great consideration should be accorded them. It is well to note at this point that Mr. Kelley's report is also practically identical with that of Ford, Bacon and Davis, with the exception of the following items: mains, services, meters, paving over mains, and overhead. Of these paving over mains, amounting to \$26,352.22, was excluded entirely from the value used for rate purposes, and the last item is one upon which the greatest differences of opinion ordinarily exist.

Referring to the matter of sinking fund, taken up on Page 7 of petitioner's brief: The conveyance referred to here is the common basis for the purchase of public utility property and gives no indication of the financial transactions of the predecessor companies.

In regard to petitioner's contention for an allowance for accrued depreciation not cared for in past operations—the evidence on this point was insufficient to justify such allowance. The books should show whether depreciation was charged off as such or whether capital investments were made from earnings, which should have gone into the depreciation fund.

In regard to paying over mains: There can be no doubt that on a strict reproduction new theory this item is a proper one. Mr. Kelley, in omitting it from his report, was merely adhering to the Commission's previously established policy in not allowing it for rate purposes, and in accordance with his statement that he had adopted the historical method in estimating reproduction cost wherever possible.

Petitioner requests that it should be allowed to earn on 100 per cent. of the value of its property if its plant is maintained at 100 per cent. operating efficiency. That such a condition does not obtain in this case is evidenced by the reported loss of 42 per cent. in gas distribution. The allowance of the Commission was 15 per cent., which is rather in excess of a normal loss in a well operated plant.

In connection with unit costs we have already referred to the fact that neither the engineers of Ford, Bacon and Davis nor Mr. Millard attempted to obtain actual costs on local construction. Mr. Kelley's unit costs were obtained both by comparison between the cost of doing such work in Monterey and elsewhere in California. The actual cost of main extensions during the past two years, as furnished by the company, show labor costs materially lower than those used by Mr. Kelley. Some evidence was introduced by the defendant to show that the cost of these extensions was not representative, but taking this exhibit in connection with

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the Commission's "Exhibit No. 2," which is a map of Monterey and Pacific Grove on which is located the character of the soil encountered in the various districts, Mr. Kelley's costs seem more ample.

The actual costs are tabulated as follows and compared with Mr. Kelley's figures:

		<i>Material</i>		<i>Labor</i>		<i>Total</i>	
		<i>Total</i>	<i>Cents per foot</i>	<i>Total</i>	<i>Cents per foot</i>	<i>Total</i>	<i>Cen's per foot</i>
1	760 feet 1½-inch pipe	\$78 07	10.272	\$44 27	5.825	\$122 34	
2	1,500 feet 1½-inch pipe	147 22	9.814	30 27	2.618	186 49	
P. G. 3	500 feet 1½-inch pipe	51 47	10.348	24 76	4.952	76 50	
4	250 feet 1½-inch pipe	17 66	7.064	14 34	5.736	32 00	
5	330 feet 1½-inch pipe	26 08	7.903	20 07	6.081	46 15	
6	390 feet 1½-inch pipe	30 17	7.736	27 85	7.141	58 02	
7	234 feet 1½-inch pipe	23 35	9.978	17 76	7.589	41 11	
8	222 feet 1½-inch pipe	20 10	9.054	12 79	5.761	32 89	
P. G. 9	114 feet 1½-inch pipe	10 42	9.140	7 23	6.342	17 65	
10	124 feet 1½-inch pipe	10 72	8.645	6 86	5.532	17 58	
11	250 feet 1½-inch pipe	25 86	10.344	22 90	9.16	48 76	
	4,674	\$441 39		\$238 10		\$679 49	
Total including contingencies.....			9.443		5.094		14.537
Costs used by Kelley, net costs.....			9.650		6.500		15.550
Including contingencies.....			9.955		7.150		
Including contingencies and superintendence.....			10.950		7.865		
Total unit costs.....			11.278		8.101		19.379

In regard to labor cost of installing meters, after comparison with considerable data on this item, the figure used appears ample.

As previously stated, overhead percentages and intangibles, such as rights and organizations, are speculative and the mere opinion of a witness on such matters, even though uncontroverted by other expert testimony, need not be followed. When, as here, however, other engineers disagree, the Commission certainly is not bound to accept any testimony on these intangibles with which it does not agree. We have every reason to believe that the figures used in this case are sufficient to cover all items of this character. The rate of return obviously more than covers the cost of obtaining capital.

It is not deemed necessary to discuss further the question of going value, as the Commission has already fully explained its position on this point.

The actual rate of return allowed is subject to dispute inasmuch as the gas sales were incompletely reported by the company. They did not include sales to flat rate consumers which were therefore estimated. Upon the basis of our calculations the return will be at least 8 per cent.

As regards the general criticism of the decision, little need be said. The Commission used the language therein found advisedly and used the mildest term that seems applicable to such a case when it designated as mental dishonesty the practice of engineers in attempting to affect values by every conceivable addition that can be thought of through the means of multifarious intangibles. I reiterate the statement made in the previous opinion that the valuation presented in this case does violate the principles of consistency, and while I regret that such language should wound the feelings of anyone, still I believe that this Commission is in duty bound to call attention to the tendency on the part of public utility engineers, acting as witnesses, invariably to exaggerate their values.

Mr. Woodbridge, the engineer who made the valuation herein, testified that the overhead percentages and the intangibles were put in by engineers other than himself, and it is not at his valuation that the Commission complains but at that which was figured by the financial engineers of this concern in an endeavor, no doubt, to have this Commission establish principles in this relatively unimportant case which, if followed out generally, would unjustly increase the valuation of utilities in this State.

I cannot see why a public tribunal should be criticized merely because of the fact that it is awake to a program that is being conceived and carried forward before its very eyes. That there is a program on the part of large financial concerns interested in public utility securities, particularly in the stock of public utilities for which ordinarily no money has been paid, to exaggerate the value of the property of these public utilities, in my opinion, admits of no doubt. That their procedure is but natural makes it

none the less necessary for public authority to be on its guard. These interests find themselves in the following condition:

The uniform practice has been in the past to construct their properties largely from the proceeds of bonds, and to give as bonus the stock of the corporation, except that which should be withheld by the promoters. Thus the actual property cost originally has been less than the face value of the outstanding bonds—to say nothing of the stock—because under this method bonds are usually sold at less than par. The problem of those in control, therefore, has been to pay the bond interest and gradually build up a value behind the stock which originally, of course, had no value. Now they find themselves halted in this program in many instances, and by valuations by Commissions the real relationship between the obligations and the assets is disclosed. Almost frantic endeavors, therefore, are being made to persuade public authority to place values upon the property of these utilities which shall be sufficient to cover the bonds, and leave, if not enough to represent par for the stock, at least enough to represent something, otherwise such stock will be seen to have no value. Furthermore, many of these utilities expect, and I imagine a great many desire, public ownership of their properties. In anticipation of such public ownership, in rate investigations they do not have the rate inquiry alone in mind, but with an eye to the future seek for this reason, too, to import elements of value that have no other foundation than in the desire of the utility to get the highest possible price for its property.

Concerning this matter, Dr. Delos F. Wilcox, a well known consulting franchise and public utility expert of New York City, in the May issue of the *Annals of the American Academy of Political and Social Science*, says:

“Valuations have come to be the big thing in the public utility world. Though for the present these valuations are usually made to serve as a basis for rate regulation, it is clear from the attitude of the courts that still higher valuations would be required in many cases as a basis for

municipal purchase. In the play for advantages in the regulatory system now being established, the public service corporations have not been slow to see the critical importance of the valuation. Accordingly, all their ingenuity, power and influence, direct and indirect, are being brought to bear upon the problem of discovering new elements of value, and of persuading or coercing the commissions and courts to recognize them. In this way, the almost inevitable trend of valuation is upward. Commissions, both out of the desire to be fair and even liberal to the companies, and also out of fear that their decisions may be upset by the courts, are continually giving the benefit of the doubt in valuation cases to the corporations owning the property. It seems reasonably certain, therefore, that, while the most scandalous abuses in capitalization will be corrected by means of regulation, nevertheless the recognized value of the actual property will be gradually swollen until it includes every conceivable element of 'overhead charges' so-called, with certain additions thrown in for good measure."

In passing it might be well to state that Dr. Wilcox has made an exception in favor of the California Railroad Commission in this regard, and up to the present time this Commission, according to him, has not fallen into the error to the same extent as other Commissions.

I repeat, as was in substance said in the main opinion, that this valuation is so inflated that it is impossible for me to conclude that there was any other design than to induce this Commission to place a value which is unwarranted upon the property of this company. If I am unjust to anyone connected with this company I regret it, but I am plainly of this opinion, and it should be no more of an affront to the gentlemen connected with this institution for me to express the opinion which I have concerning their valuation than to have such opinion without expressing it.

Concern also seems to be given to the defendant because of certain language used in the opinion in this case and which is quoted out of its connection.

The following statement appears in the application for rehearing:

"Neither is the defendant company content to rest their case upon the theory expressed in the opinion that it and its properties are 'literally at the mercy of the State' and that by inference legal considerations touch-

ing the rights and protection to private property are to have no consideration from governmental agencies."

What the Commission said, with its connection, is as follows:

"It should be understood by utilities and the public alike and recognized by commissions and courts that when you take away from an enterprise the right to determine for whom and for what price it will conduct its business, you have eliminated the possibility of applying the same rules of value as obtain in an unregulated enterprise. Value, as commercially understood, is something which cannot be determined until after the earning power is determined and the fact upon which Commissions are asked to find, when asked to find value as commercially understood, is a fact which finally has no existence until after the authority of the State has been exercised in determining the proper conditions upon which the business shall be conducted, the proper rates, and so the earning power. The sooner it is understood by the utilities that under modern conditions they are literally at the mercy of the State, the sooner they will realize that only equitable considerations are the ones that will finally have weight, and until commissions and courts representing the sovereignty of the State realize that always they should make the 'ought' determine the 'must' such governmental agencies have not become equal to their task. I do not mean to suggest that any agency should be subject to the caprice of governmental authority, but I do insist that it should be recognized as a plain fact by the utilities that they are subject to regulation and that the character of such regulation and its extent will be largely determined by the attitude of the utilities themselves."

I have recited the entire paragraph because apparently the attitude of the Commission in this regard has been misunderstood. What I had in mind was the fact, as I thought was plainly stated in the language used, that the beneficial value of a utility property to its owners is determined by what it can earn and that this earning is determined by the State, through Commissions and the check of the courts, and that finally when the determination shall rest in the tribunal having the last say such determination inevitably and fixedly establishes the value of the property of the utility to its owners. Why, under these circumstances, there should be a hesitancy on the part of utilities to accept a doctrine which urges that equitable consideration in favor of as well as

against the utility should be considered, I cannot understand. It cannot be that this utility, or any other, contends that considerations of equity when they are favorable to it shall not have weight. Conversely, then, if this doctrine is to apply at all it must apply in favor of the public if it is to be applied in favor of the utility. It is not possible to have general rules that shall be adapted to apply in all cases and to every state of facts. Necessarily, discretion must exist somewhere or injustice will result. It being established and admitted that utilities are subject to regulation as to their rates and earning power and that discretion exists in commissions and courts in determining these, necessarily it must follow that such commissions and courts representing the State control the welfare of utilities.

The warning thrown out in the paragraph in question cannot, by fair inference, be construed as having any bearing upon the attitude of this Commission. It is specifically stated that caprice shall not be followed, and of course sound economics and sound judgment the utilities have a right to expect. But the warning held out and the suggestion that the attitude of the utilities, as regards fairness, might ultimately affect their fate arose from several concrete illustrations that have come to the attention of this Commission illustrating the folly of a course of conduct on the part of a utility which leads a community to believe that such utility is unfair. One of these illustrations will suffice to make clear just what the Commission has in mind.

A certain water company serves territory within the State of California. For a long time this water company has been in trouble with its consumers, until a feeling of mutual antagonism has grown up. Recently one of the municipalities served by this water company decided that to relieve itself of further annoyance it would install its own water system, it having the legal right, of course, to do so and there being a supply of water available. When

it installed its water system it refused to pay one cent for the system of the utility theretofore serving it, with the result that such utility lost its entire investment within such municipality.

In another case now pending before this Commission, the water company, the evidence shows, has always been careful and considerate of its patrons, and in this case the municipal authorities express a desire to the Commission to secure for an adequate price the property of the utility in question, although another source of supply is available.

I suppose this defendant here does not appreciate any suggestion from this Commission as to the proper attitude a utility should assume toward the public and believes that this Commission is not within its province when making such suggestions, just as I assume the water company in the first instance would have said if such advice had been given to it. But such water company applied to this Commission for relief, which this Commission had no power to give it, and was bitterly indignant at the alleged unfair treatment given it by the municipality which refused to purchase its system.

I have gone more at length into this application for rehearing than is perhaps necessary, but I want to make it very plain that this company is considered by this Commission exactly as every other company which comes before this Commission, and this Commission has just as much the interest of this company in mind as it has the interest of any company doing business within the State, and is willing at all times to do anything in its power and consistent with its duty to be helpful to this company, just as it is with reference to all utilities, but the requirement that justice be done between utilities and their consumers will not permit this Commission to approve values such as here presented.

I see nothing further in the application requiring comment and I recommend that the same be denied and submit the following order:

ORDER.

The defendant herein having applied for a rehearing within the time allowed by law, and the same having been fully considered and being fully apprised in the premises,

It is hereby ordered, That the application for rehearing be, and the same is hereby, denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of July, 1914.

CONNECTICUT.

Public Utilities Commission.

IN THE MATTER OF PETITIONS OF WARREN D. BLATZ AND JOHN C. WIRTH OF BRIDGEPORT, REQUESTING THAT THE BRIDGEPORT GAS LIGHT COMPANY BE REQUIRED TO EXTEND ITS LINES OF PIPE TO ENABLE THE COMPANY TO FURNISH PETITIONERS WITH GAS.

Docket No. 1267.

Decided August 18, 1914.

Extension of Gas Mains Ordered — Reasonable Probability That Proposed Extensions Will Cause No Material Loss to Company — As Company Earns a Liberal Income Risk of Loss or Actual Loss from Extensions Must be Borne by the Company.

OPINION AND DECISION.

On September 29, 1913, the Commission received an informal complaint from John C. Wirth, residing at 195 Euclid Avenue, Bridgeport, requesting the Commission to investigate the alleged refusal of the Bridgeport Gas Light Company to extend its mains and supply said petitioner with gas at reasonable rates.

On June 18, 1914, the Commission received an informal complaint from Warren D. Blatz, residing at 1120 Laurel Avenue, Bridgeport, making a similar request. Both of these complaints appear in full on file and record in the office of the Commission.

In both instances the localities into which it was desired to have the gas mains extended were investigated by the Commission and the company was requested to explain its reasons for refusing service at reasonable terms as alleged. The Commission attempted to secure the consent of the company to furnish the desired service without a formal hearing and order, but was unsuccessful, the company con-

tending that the estimated cost of the extensions was unwarranted by the probable income to be derived and that under its present policy regarding extensions this service could not be given voluntarily without apparent discrimination against other patrons. The company, however, through its counsel, agreed to submit to the jurisdiction of the Commission, waiving the informal nature of the complaints and any other formalities required by statute preliminary to the public hearing on such a matter, whereupon the cases were assigned for hearing at the office of the Commission on July 31, 1914, at 2 o'clock in the afternoon and thence postponed to Monday, August 3, 1914, at 11:30 o'clock in the forenoon, at the same place, of which due notice was given to the parties interested, and at which time and place the respondent appeared and presented testimony and argument against being required by the Commission to make the extensions as prayed for.

WIRTH PETITION.

It appeared from statements and blueprints submitted at the said hearing that the house of Mr. Wirth was situated at least 735 feet from the nearest present main of the company and the estimated cost of construction of the desired extension was from \$550 to \$800. While there can be no reliable prediction as to the future growth of this locality and the prospective demand for gas by new residents, still the Commission feels after an inspection of the territory that there should be a reasonable expectation of a consumption of gas which in a short time would make the extension self-sustaining or moderately profitable.

BLATZ PETITION.

It appeared that the house of Mr. Blatz was at least 300 feet from the nearest present main of the company and that the cost of laying the necessary mains is estimated by the company at from \$358 to \$525, according to the amount of rock encountered in excavating. In this case also, the Commission believes that there is a prospect of

sufficient consumption of gas to make this extension self-sustaining or moderately profitable within a reasonable time.

The chief contention of the respondent in both cases was that the distance of the houses of the petitioners from the present mains was greater than the company's policy regarding extensions would permit them to lay without a guarantee from the prospective consumers insuring sufficient income from the first to meet at least the carrying charges upon the amount invested in the extensions. In a prepared statement this policy of the company was explained in detail. Service in accord with this policy and requiring a specific guarantee from each petitioner until actual gas sales on his extension should reach a certain point, had been offered both to Mr. Wirth and to Mr. Blatz. It was urged that a voluntary deviation on the part of the company from the established rule might be construed by other patrons now paying such guarantees on recent extensions as a discrimination against them.

FINDING AND ORDER.

The Commission has found in a case* recently decided that the Bridgeport Gas company is at present earning a fairly liberal income, and in refusing to grant a petition for a reduction of the company's rates it was stated by the Commission, as one of the reasons, that better and more extended service could fairly be required of and furnished by a company with a fair margin of profit above mere compensation. The Commission is of opinion that a company which is allowed to earn annually a fair reasonable net income, which it has been shown that this company is now earning, should at the same time follow or be required to follow a correspondingly fair and reasonable policy regarding the service given and compliance with requests

**In the Matter of the Petition of John H. McMurray et al., for a Reduction of Rates Charged for Gas by the Bridgeport Gas Light Company of Bridgeport, printed in Commission Leaflet No. 33, at page 905.*
— ED.

for extensions. We do not believe that before every portion of a main is laid it should be shown to be prospectively profitable or perhaps even self-sustaining from the start. So long as there is reason to believe that a proposed extension will produce business which will now or shortly show no material loss to the company, the company should make the extension when requested at its own expense, and should, itself, bear whatever risk of loss or actual loss may be incurred prior to the extension becoming actually profitable.

We are of opinion and find that both of the present cases come within this class, and

We, therefore, order and direct, Said the Bridgeport Gas Light Company to extend its lines of mains and to be prepared to furnish gas at the residences of the said Wirth and Blatz, petitioners herein, on or before October 1, 1914.

We further order and direct, Said company, upon or after said date, and upon request from said petitioners, to furnish service at said residences in the same manner and at the same rates as service is rendered to other patrons of the said company in said city of Bridgeport and without said petitioners being required as a consideration for such service to make any guarantee of consumption in the form or in form similar to that heretofore required by the company as a prerequisite for extensions in excess of 125 feet.

We further determine and direct, That notice of the foregoing finding, order and decree be given to the petitioners, Warren D. Blatz and John C. Wirth, and to Marsh, Stoddard and Day, attorneys for the respondent, the Bridgeport Gas Light Company, by Henry F. Billings, Secretary of this Commission, by forwarding to each by registered mail, a true and attested copy hereof on or before the eighteenth day of August, 1914, and due return make hereon.

Dated at Hartford, Connecticut, this eighteenth day of August A. D., 1914.

IDAHO.

Public Utilities Commission.

H. H. ABRAMS *v.* PACIFIC AND IDAHO NORTHERN RAILWAY
COMPANY, A CORPORATION.

Case No. F-52—Order No. 143.

Decided August 7, 1914.

Free and Reduced Service to Ministers of Religion—Discrimination Between Members of this Privileged Class.

The Commission found that the rule and practice of the defendant company in granting permits to ministers of religion which enable them to travel over the line of the defendant company at reduced or one-half rate fares was merely a privilege extended to said persons by the defendant, which privilege the defendant might grant or withhold at its option; that the canceling of Permit No. 31 granted to the complainant by the defendant while at the same time the defendant was permitting such privileges to remain in force as to other ministers of religion was a discrimination against the complainant; that such action was in contravention of Section 18 of the Public Utilities Act of the State of Idaho.

An order was entered directing the defendant to cease denying to the complainant as a minister the privilege of procuring transportation over the defendant's lines at reduced or one-half fare rates, while at the same time granting to other ministers such privileges.*

* Editor's note prepared from the record.

INDIANA.

Public Service Commission.

**CITY OF RICHMOND, INDIANA, v. RICHMOND CITY WATER
WORKS.**

No. 176.

Decided June 20, 1914.

**Petition Requesting Investigation by Commission of Value of Property of
Respondent and Establishment of Reasonable Rates for Water in the
City of Richmond—Investigation Made by Commission,
Valuation of Property of Water Company Determined,
Schedule of Reasonable Rates Prescribed, and
Rules and Regulations of Respondent Com-
pany Considered and so Changed as
to be Fair and Equitable.**

The Commission after a careful consideration of actual cost of plant, actual investment as shown by the capitalization of the company, the cost of reproduction new, the cost of reproduction new less depreciation and the valuation of the property submitted for purposes of taxation, found the fair value of the property for rate making purposes to be \$750,000, this value including new improvements contracted for but not completed and also including \$25,000 for going value.

Going Value.

Held: That in so far as going value is measured by the early losses incurred in building up the business, no allowance could be made since all moneys expended in developing business had been reimbursed out of profits from the successful operation of the plant.

That in so far as going value represents the difference between the completed plant without use of its service and the same property with a full demand for its service, it was difficult to define but must be considered by the Commission.

That the sum of between \$122,059 and \$113,980 claimed by witnesses for the company was unreasonable. The Commission allowed \$25,000.

**Fixed Charges—Operating Expenses—Depreciation Fund—Reasonable
Return to Company.**

Having determined a fair and reasonable value of the property, the Commission next found that the fixed charges would be approximately

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\$10,000; operating expenses approximately \$25,360; and depreciation charge $\frac{1}{2}$ of 1 per cent. of the value of the property, or \$6,000.

The Commission further found that 6 per cent. net on the value of the property, as found by the Commission, would be a rate of return fair both to the users of the utility and the investors therein.

Reasonable Rates.

The Commission thereupon prescribed a schedule of rates (based on the cost of service to each class of consumers), which in the opinion of the Commission would yield to the company a reasonable return.

Discrimination — Discrepancy in Schedules — Preferential Rates.

It appeared that the defendant was not charging in all cases the rates on file with the Commission.

Ordered, That the respondent charge in all cases the rates prescribed by the Commission and cease to give any preferential or unjustly discriminatory rates.*

OPINION AND ORDER.

On the fifth day of August, 1913, the city of Richmond, Indiana, filed with the Public Service Commission a petition alleging the following facts:

The petition of the above named petitioner, the city of Richmond, Indiana, respectfully shows:

(1) That said petitioner is now and was at all times herein mentioned a municipality situate in the county of Wayne, and State of Indiana, and is duly and legally organized and incorporated as a city and pursuant to the laws of the State of Indiana, and now contains a population of about 25,000 inhabitants.

(2) That said respondent is now and was at all times herein mentioned a private corporation duly and legally organized and operating under and pursuant to the laws of the State of Indiana, with its principal office and chief place of business in said city; that it is a public utility operating under an indeterminate permit, and that as such public utility said respondent is subject to the provisions of the laws of the State of Indiana.

* Editor's headnote.

(3) That said respondent now owns, operates, manages and controls, and at all times herein mentioned it has owned, operated and controlled, a plant, equipment and apparatus within said Wayne County, and the major portion of which is within said city of Richmond, for the production, transmission, delivery and furnishing of water to and for the public and to the inhabitants of said city; that it furnishes and supplies water for pay to said city for the purpose of suppressing and extinguishing fires therein, and for the private use of said city, and to numerous and divers residents and citizens of said city for domestic and sprinkling purposes, and to numerous and divers individuals, firms and corporations within said city for steam, manufacturing and other purposes, all of which water is so furnished by said respondent under and pursuant to a schedule of rates and charges, and in accordance with rules and regulations which were heretofore adopted.

(4) That said petitioner is directly interested in all the rates and charges made by said respondent for water furnished within said city.

(5) That said respondent charges said petitioner for service of water for prevention and extinguishment of fires the sum of \$15,854 per annum, one-half thereof payable semi-annually on April first and October first of each year; said sum being based on the number of fire hydrants within said city; there now being 225 hydrants for which said respondent charges said petitioner per hydrant per year the sum of \$55.00, and 71 hydrants for which said respondent charges said petitioner per hydrant per year the sum of \$49.00, and 29 intermediate hydrants which have been erected at the expense of said petitioner for which no charge is made, making an average of a little more than \$48.78 per year for each hydrant.

That such rates and charges by said respondent for fire hydrants made against said petitioner are excessive, exorbitant and unreasonably high.

(6) That said respondent refuses to make an extension to its system of pipes and water mains unless there are *bona fide* applications by residents or property owners on the line of such proposed extension for water for their own consumption to such an amount that the annual income therefrom at the rates fixed therefor shall equal at least the sum of \$49.00 per annum for each 500 feet of such extension, or unless said petitioner will rent of said respondent an additional fire hydrant for each 500 feet of such extension.

That such regulation, practice and rule is unreasonable, insufficient and unjustly discriminatory and such service is inadequate and cannot be obtained.

(7) That said respondent charges flat rates for water it furnishes private dwelling houses, as follows:

For one room, per annum.....	\$3 00
For two rooms, per annum.....	3 60
For three rooms, per annum.....	4 20
For four rooms, per annum.....	4 80
For five rooms, per annum.....	5 40
For six rooms, per annum.....	6 00
For seven rooms, per annum.....	6 60
For eight rooms, per annum.....	7 20
For nine rooms, per annum.....	7 80
For ten rooms, per annum.....	8 40
For eleven rooms, per annum.....	9 00
For each additional room.....	50

These rates apply to all rooms except attic rooms, small rooms over halls, and rooms in basements, on which a rate of 25 cents is assessed.

Rooms in outbuildings, rear buildings, or buildings on alleys, when occupied by servants, are assessed 25 cents each per annum, and when occupied by tenants, one-half the rates on private dwellings.

The above rates are for the general uses of water in and about the dwellings, while the following rates are for the special uses of water as named, as follows:

Baths, each faucet, per annum.....	\$2 50
Sitz baths, each faucet, per annum.....	50
Foot baths, each faucet, per annum.....	25
Sinks, each faucet, per annum.....	1 00
Urinals, each, per annum.....	1 50
Water closets with hand valves, each, per annum.....	3 00
Water closets with valves open during entire sitting, each, per annum	6 00
Wash hand basins, each, per annum.....	50
Wash trays, tubs or bins, each faucet, per annum.....	50
Hose attachment for sprinkling the streets during the sprinkling season, and washing sidewalks, steps, windows and fronts of lots not exceeding 33 feet front and half the width of the street, each, per annum	3 00
For each additional foot front.....	66
Corner lots, both fronts are charged, if sprinkled, at above rates, by aggregating and estimating both fronts as one equivalent front.	
Hose automatic or rotative lawn sprinklers, each, per annum....	1 00

That each and all of the rates and charges herein named are excessive, exorbitant, unreasonable and unjustly discriminatory.

(8) That the rates and charges made by the respondent for water furnished boarding houses within said city, accommodating more than five boarders, and being \$4.00 for one room and \$1.00 additional for each additional room, are excessive, exorbitant, unreasonable and unjustly discriminatory.

(9) That the flat rates charged by respondent for water furnished all domestic consumers within said city are excessive, exorbitant, unreasonable and unjustly discriminatory.

(10) Said respondent charges this petitioner for water which it uses through meter the sum of 25 cents per 1,000 gallons, and all the consumers that use water by meter within said city are charged by said respondent the following:

METER RATES.

Domestic consumers, 25 cents per 1,000 gallons.

1,200 to	2,500 gallons per day,	15	cents per 1,000 gallons.
2,500 to	5,000 gallons per day,	12 $\frac{1}{2}$	cents per 1,000 gallons.
5,000 to	10,000 gallons per day,	10	cents per 1,000 gallons.
10,000 to	30,000 gallons per day,	9	cents per 1,000 gallons.
30,000 to	50,000 gallons per day,	8	cents per 1,000 gallons.
50,000 to	75,000 gallons per day,	7	cents per 1,000 gallons.
75,000 to	100,000 gallons per day,	6	cents per 1,000 gallons.

(11) That said rate or charge of 25 cents per 1,000 gallons made by said respondent for domestic consumption of water is excessive, exorbitant and unreasonably high.

(12) That said meter rates charged domestic consumers for water by said respondent are excessive, exorbitant and unreasonable and unjustly discriminatory against said city and the users of small quantities of water and in favor of consumers that use large quantities.

(13) Rule 28 as promulgated by respondent and enforced for many years last past is as follows:

“ Owners of premises may have meters attached to their services by making written application at the office of the water works. Before meter is placed, the consumer shall, at his expense, have pipes so arranged that all water will pass through meter.

“ Where more than one meter is connected to a service supplying the premises applications for water through said meters shall be made by the owner.

“ If, at the time of setting a meter, the stop and waste valve on main supply line is missing or defective, the water works will supply one at cost. Extra piping, where necessary, will be charged to the applicant.”

And said respondent refuses to set meters unless the owner of premises upon which the same are to be set executes the following contract:

“ I hereby make application for a water meter to be placed at, said property being owned by me and occupied by

" I agree to be responsible for damage to meter caused by freezing, hot water, steam setting back from boiler, or any damage caused by carelessness.

" I further agree to be responsible for any six months' unpaid water and meter rental at above premises.

" Send statement to

", Applicant."

That said rule or requirement in order to obtain water by meter is unreasonable, unfair and unjustly discriminatory and places upon such a consumer unjust, unreasonable, unfair and inequitable burdens.

(14) That said respondent charges consumers for the use of meters a monthly rental therefor, payable when water bills are due, the water works setting meters without additional charge, except as provided in Rule 28, as follows, to wit:

For $\frac{1}{2}$, $\frac{5}{8}$ and $\frac{3}{4}$ inch meters.....	\$0 25
For 1 inch meters.....	50
For $1\frac{1}{2}$ inch meters.....	75
For 2 inch meters.....	1 00
For 3 inch meters.....	2 00
For larger sizes of meters an additional monthly meter rental is charged.	

(15) That the monthly rates and charges made by respondent for the use of meters to measure the amount of water consumed are unjust, unreasonable, inequitable, excessive and exorbitant, and by making and enforcing such charges, or any charge, for the use of meters, said respondent is thus enabled to receive and does receive, on the average from domestic consumers, rates for water consumed much in excess of 25 cents per 1,000 gallons, and much in excess of reasonable and fair rates.

(16) That the rates charged by respondent for the services rendered petitioner and other consumers within said city are excessive, unjust, unfair and unreasonably high.

(17) The charges made by respondent for tapping mains and laying service pipe from mains in street to immediately inside the curb for single taps, \$10.00 to \$30.00, and double

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taps, \$13.00 to \$35.00, and more for cast iron services, are excessive, exorbitant, and unreasonably high.

Wherefore, the petitioner prays that said respondent, the Richmond City Water Works, be required to answer the charges herein, that due hearing and investigation be had and the actual value of the property of respondent used and useful in supplying water to said city and its inhabitants be ascertained; that a just, reasonable and lawful rate or charge be fixed by proper order which said petitioner should pay for water for fire purpose and for all other purposes and for all other consumers; that respondent be required to reduce all its present rates and charges for water; that the rates be equitably adjusted; that respondent be forbidden by proper order from charging or receiving any meter rental or other charge for use of meter; that all meters be ordered furnished, installed and maintained by respondent free of all cost and expense to the consumer; that all reasonable, proper and necessary extensions of respondent's plant be ordered made so as to make full and efficient service to all the inhabitants of said city; and for such other and further orders as the Commission may deem just, necessary, legal, proper or equitable in the premises.

Due notice of the filing of the petition was given to the water works. An order was issued directing the company to file with the Commission an inventory of all its property; this it did in due season.

Two of the Commission's accountants audited the books of the company from the time of its organization until the completion of the audit. The report of the accountants was full and complete.

After the inventory was received, the engineering staff of the Commission was requested to examine the property and prepare for the Commission a complete appraisal of all the assets of the company. This tentative valuation of our staff was completed in triplicate, and one copy was forwarded to the company and one to the city.

Each was furnished with a copy of the Rules of Practice of the Commission, and attention directed to Rule 9, which provides for filing of exceptions to the appraisal made by the Commission's staff. Ten days were given to file exceptions to the appraisal.

On the second day of February, 1914, the city filed nine exceptions to the valuation made by the Commission's staff. On the same day, the company filed twenty-two exceptions to the valuation made by the Commission's staff.

The cause was set for trial at the office of the Commission, in Indianapolis, on the eighteenth day of February, 1914.

At the hearing the city was represented by *Mr. William A. Bond*, and the Richmond City Water Works was represented by *Monks, Robbins, Starr and Goodrich*. The city requested the opening and closing of the case. This was granted, and the taking of evidence began. The city introduced in evidence the audit made by our accountants, and the tentative valuation made by our engineering staff.

It also introduced in evidence a valuation of the property made by *Edwyn E. Watts*, a hydraulic engineer of Princeton, Indiana.

The company introduced in evidence an appraisal of the plant made by *Alvord and Burdick* of Chicago, and an appraisal made by *Professor D. W. Mead* of the University of Wisconsin. Oral evidence was introduced by each of the parties.

The final estimate of the value of the plant as determined by our staff is as follows:

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	<i>Cost of reproduction.</i>	<i>Present value.</i>
A. Land.	\$29,305	\$29,206
B. Transmission and distribution.	419,795	390,831
C. Buildings and miscellaneous structures.	81,803	60,965
D. Plant equipment	109,085	95,979
E. General equipment	13,612	11,427
F. Paving.	48,208	42,746
TOTAL.	\$701,808	\$631,154
Add 12 per cent. (see note below).	84,217	75,739
TOTAL.	\$786,025	\$706,893
H. Material and supplies.	16,973	16,773
TOTAL.	\$802,998	\$723,666

NOTE.—Addition of 12 per cent. to cover engineering, superintendence, interest during construction, contingencies, etc.

THE FINAL ESTIMATE MADE BY ALVORD AND BURDICK IS AS FOLLOWS:

Item.	Reproduction cost.	Date of construction.	Estimated life in years.	Interest rate, per cent.	Annual, per cent.	Depreciation amount.	Total depreciation.			Net physical value.
							Age, years.	Factor, per cent.	Amount.	
Division A — Preliminary Cost.										
1. Preliminary cost.....	\$17,865	.....	.....	.....	.....	.....	.....	.....	.....	\$17,865
Division B — Lands Used in Operation of Property.										
2. Pumping station land.....	\$871	.....	.....	.....	.....	.....	.....	.....	.....	\$871
3. Water supply land.....	15,600	.....	.....	.....	.....	.....	.....	.....	.....	15,600
4. Reservoir tract.....	500	.....	.....	.....	.....	.....	.....	.....	.....	500
5. General office lot.....	1,000	.....	.....	.....	.....	.....	.....	.....	.....	1,000
6. Utility equipment lot.....	725	.....	.....	.....	.....	.....	.....	.....	.....	725
TOTALS, DIVISION B.....	\$18,496	.....	.....	.....	.....	.....	.....	.....	.....	\$18,496
Division C — Water Rights and Rights of Way.										
7. Water rights.....	\$20,000	.....	.....	.....	.....	.....	.....	.....	.....	\$20,000
8. Rights of way.....	7,500	.....	.....	.....	.....	.....	.....	.....	.....	7,500
TOTALS, DIVISION C.....	\$27,500	.....	.....	.....	.....	.....	.....	.....	.....	\$27,500
Division D — Buildings Used in Operation of Property.										
9. Engine room foundations.....	\$4,379	.....	45	3	1.1	\$48	25	39.5	\$1,730	\$2,649
10. Engine room above foundations.....	8,333	1885	45	3	1.1	92	28	48.1	3,842	4,491
11. Vaults in station grounds.....	260	.....	65	24	.57	1	13	9.0	23	4,237
12. Ground improvements.....	400	.....	.....	.....	.....	.....	.....	.....	.....	400
13. Air valve house.....	338	.....	.....	.....	.....	.....	.....	.....	.....	300
14. Boiler room foundations.....	678	1911	50	3	.89	6	2	1.8	12	666
15. Boiler room above foundations.....	4,539	1911	50	3	.89	40	2	1.8	82	4,457
16. Suction well.....	413	1885	30	34	2.02	8	28	89.8	371	42
17. Collecting wells.....	267	1895	20	34	3.53	9	18	86.8	232	35
18. Gallery No. 1.....	1,382	1885	75	24	.42	6	28	17.1	236	1,146
19. Gallery No. 2.....	4,811	1886	75	24	.42	10	27	15.3	784	4,027
20. Gallery No. 3.....	2,867	1887	75	24	.42	23	26	15.5	440	2,448
21. Gallery No. 4.....	2,615	1888	75	24	.42	11	25	14.5	379	2,236
22. Cooper wells.....	1,507	1895	75	24	.42	7	18	9.6	145	1,362
23. Corner's spring.....	560	1912	75	24	.42	.....	1	.42	.....	54
24. Weir chamber.....	560	1912	75	24	.42	.....	1	.42	.....	54
25. Reservoir.....	34,612	1885	100	24	.23	580	28	9.2	3,184	31,428
26. Office building.....	9,000	9,000
27. Coal house.....	2,678	1911	50	3	.89	24	2	1.8	48	2,630

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28. Switch track	2,014	1885	75	21	42	8	28	17.1	344	1,670
29. Storage shed	433	1885	75	21	42	2	28	17.1	74	859
30. Residences	8,200								3,000	5,200
TOTALS, DIVISION D.	\$90,372					\$882			\$17,475	\$72,897
Division E — Pumping Station Equipment.										
31. Main pumping engines	\$30,000		45	3	1.00	\$324			\$10,454	\$19,546
32. Miscellaneous equipment	3,865				1.1	43			1,166	2,719
33. Electric driven vacuum pump	966	1895	40	3	1.33	13	18	30.0	1,114	852
34. Boilers	8,644	1911	30	3	2.02	175	2	30.9	346	8,298
35. Miscellaneous boiler equipment	280	1911	30	3	2.02	6	2	4.0	11	269
36. Sixteen inch pipe collecting to suction well	123	1895	20	3	3.5	4	18	86.8	107	16
37. Twenty-four inch pipe gallery No. 1 to suction well	353	1885	30	3	2.02	8	28	89.8	344	39
38. Six inch pipe gallery No. 2 to condenser well	37	1885	30	3	2.02	1	2	89.8	33	4
39. Ten inch pipe gallery No. 3 to gallery No. 2	2,470	1887	75	2	4.2	10	26	15.5	383	2,087
40. Pipe lines No. 4 to collecting well	15,423	1888	75	2	4.2	64	25	14.6	2,236	13,187
41. Sixteen inch syphon line	40,874	1895	75	2	4.2	170	18	9.6	3,924	36,950
42. Corner's spring lines	1,880	1912	75	2	4.2	8	1	9.2	8	1,872
43. Transmission main	17,009	1885	100	2	.23	39	28		1,565	15,444
TOTALS, DIVISION E.	\$121,974					\$865			\$20,691	\$101,283
Division F — Distribution System.										
44. Street mains	\$182,828		100	21	.23	\$432	16	4.4	\$9,005	\$173,823
45. Specials on mains	4,340		100	21	.23	10	16	4.4	191	4,149
46. Laying mains	85,189		100	21	.23	239	16	4.4	4,993	80,196
47. Unusual excavation	7,195		100	21	.23	17	16	4.4	317	6,878
48. Pavements	57,131		100	21	.23	132	16	4.4	2,514	54,617
49. Steam railroad crossing	1,212		100	21	.23	3	16	4.4	53	1,159
50. Street railroad crossing	795		100	21	.23	2	16	4.4	35	760
51. Miscellaneous crossings	5,455		100	21	.23	13	16	4.4	240	5,215
52. Valves	6,816		50	3	.89	60	16	17.9	1,220	5,596
53. Valve boxes and pits	3,598		50	3	.89	32	16	17.9	644	2,954
54. Services	56,277		50	3	.89	501	16	17.9	10,074	46,203
55. Unusual excavation (services)	2,208		50	3	.89	20	16	17.9	395	1,813
56. Pavements over services	8,828		50	3	.89	79	16	17.9	1,580	7,248
57. Hydrants	10,668		50	3	.89	95	16	17.9	1,910	8,758
58. Meters	40,443		25	3	2.57	1,039	8.5	25.0	10,111	30,332
59. Free services										
TOTALS, DIVISION F.	\$472,983					\$2,724			\$43,282	\$429,701
Division G — Inventories.										
60. General office equipment	\$6,107				10.0	\$611				\$6,107
61. Utility equipment	2,308				10.0	231				2,308
62. Miscellaneous equipment	20,866					2,087				20,866
TOTALS, DIVISION G.	\$29,281					\$2,929				\$29,281

FINAL ESTIMATE BY ALVORD AND BURDICK — Continued.

Item.	Reproduction cost.	Date of construction.	Estimated life in years.	Interest rate, per cent.	Annual, per cent.	Depreciation, amount.	Total depreciation.			Net physical value.
							Age, years.	Factor, per cent.	Amount.	
<i>Division H — General</i>										
63. Engineering and superintendence.....	\$35,731	.....	.....	.....	.....	\$370	.....	.....	\$4,073	\$31,658
64. General construction costs.....	42,877	.....	.....	.....	.....	444	.....	.....	4,897	37,980
65. Interest during construction.....	40,145	.....	.....	.....	.....	415	.....	.....	4,570	35,575
66. Going value.....	122,059	.....	.....	.....	.....	.....	.....	.....	.....	122,059
Total Coor. Reproduction.	\$1,019,283	.....	.....	.....	.....	\$8,629	.....	.....	\$94,978	\$924,305
67. Operating capital.....										

THE FINAL ESTIMATE OF THE PROPERTY MADE BY D. W. MEAD IS AS FOLLOWS:

Item.	Reproduction cost.	Date of construction.	Estimated life in years.	Interest rate, per cent.	Annual, per cent.	Depreciation, amount.	Total depreciation.			Net physical value.
							Apr. years.	Factor, per cent.	Amount.	
Division A — Preliminary Cost.										
1. Preliminary cost.....	\$15,026							9.14	\$1,373	\$13,653
Division B — Lands Used in Operation of Property.										
2. Pumping station lands.....	\$1,100									\$1,100
3. Water supply land.....	750									750
4. Water supply tract.....	3,250									3,250
5. Ground office lot.....	135									135
6. Utility equipment lot.....										
TOTALS, DIVISION B.....	\$20,938									\$20,938
Division C — Water Rights and Rights of Way.										
7. Water rights.....	\$20,000									\$20,000
8. Rights of way.....	5,080									5,080
TOTALS, DIVISION C.....	\$25,080									\$25,080
Division D — Buildings Used in Operation of Property.										
9. Engine room foundations.....	\$5,080	1885	45	4	.83	\$42	28	41.3	\$2,102	\$2,988
10. Engine room above foundations.....	9,913	1885	45	4	.83	82	28	41.3	4,084	5,819
11. Vaults in station grounds.....	306	1899	65	4	.35	1	14	6.4	20	286
12. Ground improvements.....	621									621
13. Air valve houses.....	344	1908	35	4	1.36	5	5	7.4	25	319
14. Boiler room foundations.....	692	1911	45	4	.83	6	2	1.7	12	680
15. Boiler room above foundations.....	4,747	1911	45	4	.83	39	2	1.7	81	4,666
16. Section well.....	270	1885	30	4	1.78	7	28	89.1	376	46
17. Collecting well.....	1,332	1885	20	4	3.36	9	18	86.1	232	38
18. Gallery No. 1.....	5,971	1886	75	4	.22	3	28	11.2	149	1,183
19. Gallery No. 2.....	3,858	1887	75	4	.22	22	27	10.5	627	5,344
20. Gallery No. 3.....	4,430	1887	75	4	.22	8	26	9.9	382	3,476
21. Gallery No. 4.....	1,411	1885	75	4	.22	10	25	9.3	413	4,026
22. Cooper well.....	99	1895	75	4	.22	3	18	5.7	80	1,331
23. Corner's spring.....	500	1912	100	4	.08		1	.1		500
24. Weir chamber.....	38,623	1912	100	4	.08		1	.1		37,039
25. Reservoir.....	5,310	1885	75	4	.22	31	28	4.1	1,584	3,726
26. Office building.....	2,735	1876	50	4	.44	12	37	18.3	970	4,340
27. Coal house.....		1911	50	4	.65	18	2	1.3	36	2,699

FINAL ESTIMATE BY PROFESSOR D. W. MEAD — Continued.

Item.	Reproduction cost.	Date of construction.	Estimated life in years.	Interest rate, per cent.	Annual depreciation, per cent.	Depreciation amount.	Total depreciation.			Net physical value.
							Age, years.	Factor, per cent.	Amount.	
28. Switch track.	\$4,102	1885	50	4	.65	\$27	28	32.8	\$1,345	\$2,757
29. Storage shed.	392	1885	75	4	.25	1	28	11.2	.44	348
		1886					27	30.9		
		1892					21	21.0		
30. Residences.	8,452	1890	50	4	.65	55	13	10.9	1,755	6,727
		1903					10	7.9		
TOTALS, DIVISION D. — Pumping Station Equipment.										
31. Main pumping engines.	\$99,659								\$14,327	\$85,332
	\$12,000	1885	45	4	.85	\$100	28	41.3	\$4,956	\$20,922
	18,000	1894				149	19	22.9	4,122	
	3,108					34		30.0	932	2,176
32. Miscellaneous equipment.	1,000	1895	40	4	1.05	10	18	27.0	270	8,234
33. Boilers.	8,541	1911	30	4	1.75	152	2	3.6	307	
34. Electric driven vacuum pump.	301	1911	30	4	1.75	5	2	3.6	11	290
35. Miscellaneous boiler equipment.	140	1895	20	4	3.30	5	18	86.1	120	20
36. Sixteen inch pipe collecting to suction well.	515	1885	30	4	1.75	9	28	89.1	459	56
37. Twenty-four inch pipe gallery No. 1 to suction pipe.	34	1885	30	4	1.75	1	28	89.1	30	4
38. Six inch pipe, gallery No. 2 to condenser well.	2,500	1887	75	4	.25	37	26	9.9	2,252	2,252
39. Ten inch pipe, gallery No. 3 to gallery No. 2.	18,591	1888	75	4	.25	94	25	9.3	1,543	15,048
40. Pipe lines, gallery No. 4 to collecting well.	42,606	1895	75	4	.25	94	18	5.7	2,429	40,177
41. Sixteen inch syphon line.	3,081	1912	75	4	.25	7	1	2	7	3,084
42. Corner's spring lines.	16,992	1885	100	4	.05	14	28	4.1	697	16,295
43. Transmission main.										
TOTALS, DIVISION E.										
	\$125,419								\$16,131	\$109,288
Division F — Distribution System.										
44. Street mains.	\$186,798		100	4	.05	\$149	16	1.8	\$3,362	\$183,434
45. Specials on mains.	4,430		100	4	.05	4	16	1.8	80	4,350
46. Laying mains.	10,492		100	4	.05	81	16	1.8	1,828	99,638
47. Manual excavation.	4,435		100	4	.05	4	16	1.8	116	6,349
48. Paved sidewalks.	57,988		100	4	.05	46	16	1.8	1,044	56,942
49. Paved railroad crossings.	1,295		100	4	.05	1	16	1.8	23	1,272
50. Street railroad crossings.	1,795		100	4	.05	1	16	1.8	14	1,781
51. Miscellaneous crossings.	5,679		100	4	.05	5	16	1.8	102	5,577
52. Valves.	6,169		50	4	.30	40	16	14.3	892	5,277
53. Valve boxes and pits.	4,580		60	4	.30	30	16	14.3	3,655	3,925
54. Services.	50,087		50	4	.30	305	16	14.3	8,020	48,107

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55. Unusual excavation (services).....	1,987	50	4	.65	13	16	14.3	284	1,703
56. Pavements over services.....	10,889	50	4	.65	71	16	14.3	1,557	9,332
57. Hydrants.....	11,370	.....	50	4	.65	74	16	14.3	1,626	9,744
58. Meters.....	40,593	.....	25	4	2.41	978	8.5	23.8	9,661	30,932
59. Fire services.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
TOTALS, DIVISION F.....	\$496,543	.....	.....	.....	.....	.....	.....	.....	\$29,552	\$467,291
<i>Division G — Incineraries.</i>										
60. General office equipment.....	\$5,432	.....	.....	.....	.....	.....	.....	.....	.....	\$5,432
61. Utility equipment.....	2,339	.....	.....	.....	.....	.....	.....	.....	.....	2,339
62. Miscellaneous equipment.....	21,781	.....	.....	.....	.....	.....	.....	.....	.....	21,781
TOTALS, DIVISION G.....	\$29,552	.....	.....	.....	.....	.....	.....	.....	.....	\$29,552
<i>Division H — General</i>										
63. Engineering and superintendence.....	.....	.....	.....	.....	.....	.....	.....	9.14	\$10,825	\$107,740
64. General construction costs.....	\$118,565	.....	.....	.....	.....	.....	.....	.....	.....	113,980
65. Interest during construction.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10,000
66. Going value.....	113,980	.....	.....	.....	.....	.....	.....	.....	.....	113,980
67. Operating capital.....	10,000	.....	.....	.....	.....	.....	.....	.....	.....	10,000
TOTALS, DIVISION H.....	\$242,545	.....	.....	.....	.....	.....	.....	.....	.....	\$231,720
GRAND TOTALS.....	\$1,054,762	.....	.....	.....	.....	.....	.....	.....	.....	\$982,854

The final estimate of the property, made by E. E. Watts, is as follows:

DIVISION A.—PRELIMINARY COST.

<i>Item</i>			<i>Net</i>
<i>No.</i>	<i>Item.</i>	<i>Reproduction</i>	<i>physical</i>
		<i>cost.</i>	<i>value.</i>
1.	Preliminary cost—		
2.	Pumping station fund.....	\$671	\$671
3.	Water supply land.....	8,031	8,503
4.	Reservoir tract.....	1,131	1,118
5.	General office lot.....	3,625	3,625
6.	Utility equipment, lot, etc.....	800	766
TOTAL DIVISION B.....		\$14,258	\$14,683

DIVISION C.—WATER RIGHTS AND RIGHTS OF WAY.

7.	Water rights	\$11,400	\$11,000
8.	Rights of way.....	3,647	3,647
TOTAL DIVISION C.....		\$15,047	\$14,647

DIVISION D.—BUILDINGS USED IN OPERATION OF PROPERTY.

9.	Engine room foundations.....	\$6,691	\$4,483
10.	Engine room above foundations.....		
11.	Vaults in station grounds.....	385	319
12.	Ground improvements	53	45
13.	Air valve house.....	276	262
14.	Boiler room foundations.....	2,252	1,519
15.	Boiler room above foundations.....	5,634	5,409
16.	Suction well	375	252
17.	Collecting well	276	218
18.	Gallery No. 1.....	1,277	856
19.	Gallery No. 2.....	4,459	3,077
20.	Gallery No. 3.....	2,505	1,779
21.	Gallery No. 4.....	2,615	1,910
22.	Cooper well	1,462	1,374
23.	Comer's spring	19	19
24.	Weir chamber	505	505
25.	Reservoir.....	28,436	25,038
26.	Office building	7,587	3,490
27.	Coal house	2,796	2,689
28.	Switch track	2,266	1,678
29.	Storage shed	436	420
30.	Residences and other buildings.....	11,498	5,623
TOTAL DIVISION D.....		\$81,803	\$60,965

DIVISION E.—PUMPING STATION EQUIPMENT.

<i>Item</i> <i>No.</i>	<i>Item.</i>	<i>Reproduction</i> <i>cost.</i>	<i>Net</i> <i>physical</i> <i>value.</i>
31.	Main pumping engines.....	\$29,000	\$16,619
32.	Miscellaneous equipment	5,598	4,203
33.	Electric driven vacuum pump.....	969	931
34.	Boilers.	3,586	3,374
35.	Miscellaneous boiler equipment.....	5,722	5,325
36.	16-inch pipe, collecting to suction well....	131	114
37.	24-inch pipe, gallery No. 1 to suction well..	364	315
38.	6-inch pipe, gallery No. 2 to condenser....	32	28
39.	10-inch pipe, gallery No. 3 to gallery No. 2.	2,068	1,652
40.	Pipe lines, gallery No. 4 to connecting well.	18,959	16,751
41.	16-inch siphon line.....	39,980	37,432
42.	Comer's spring lines.....	1,941	1,747
43.	Transmission main	17,294	15,020
TOTAL DIVISION E.....		<u>\$125,644</u>	<u>\$103,511</u>

DIVISION F.—DISTRIBUTION SYSTEM.

44.	Street mains	\$189,500	\$181,717
45.	Specials on mains.....	4,234	3,637
46.	Laying mains	78,537	67,133
47.	Unusual excavation	7,305	6,246
48.	Pavements.	2,287	1,829
49.	Steam railroad crossings.....	1,050	903
50.	Street railroad crossings.....	1,060	971
51.	Miscellaneous crossings	2,644	2,274
52.	Valves.	5,314	4,028
53.	Valve boxes and pits.....	4,143	3,544
54.	Services.	21,208	16,967
55.	Unusual excavation (services).....	2,241	1,793
56.	Pavement over services.....	.....	.....
57.	Hydrants.	14,189	11,147
58.	Meters.	33,461	24,443
59.	Free services .....	.....	.....
TOTAL DIVISION F.....		<u>\$367,173</u>	<u>\$326,652</u>

DIVISION G.—INVENTORIES.

<i>Item No.</i>	<i>Item.</i>	<i>Reproduction cost.</i>	<i>Net physical value.</i>
60.	General office equipment.....	\$6,741	\$5,730
61.	Utility equipment	6,871	5,687
62.	Miscellaneous equipment, material and supplies.	16,973	16,473
TOTAL DIVISION G.		<u>\$30,585</u>	<u>\$27,900</u>

DIVISION H.—GENERAL.

63.	Engineering and superintendence.....	} \$50,590	\$50,590
64.	General construction cost.....		
65.	Interest during construction.....		
66.	Going value .....	.....	.....
67.	Operating capital	10,000	10,000
TOTAL DIVISION E. ....		.....	.....
GRAND TOTAL		<u>\$685,100</u>	<u>\$596,678</u>

The following table shows the actual cost of the plant, the amount of original capital invested, and how the same was acquired, the amount of invested surplus, and the net profit over and above 6 per cent. annual interest on the actual investment, to wit:

TOTAL COST FROM INCEPTION MAY 24, 1884, TO JUNE 30, 1913, COMPILED BY EDWYN E. WATTS, FROM AUDIT OF PUBLIC SERVICE COMMISSION.

Distribution of cost.	Page	Prior to June 30, 1909	Page	From June 30, 1909, to June 30, 1913		Total depreciation	
						Page	Reserves
S. L. Wiley Construction Company, contract.	58	\$283,216 04	38		\$283,216 04		
Preliminary expenses.	6	50,564 84	37	\$25 90	50,590 74		
Real estate (credits deducted).	7	6,339 47	37	12,703 27	19,132 74		
Water right and right of way.	8-9	17,721 94	38	334 50	18,056 44		
Water collecting system (credits, debits)	10	57,048 27	38	8,049 47	65,097 74		
Building (credits deducted)	11	11,637 12	36	5,729 73	17,366 85	44	\$5,758 60
Machinery and equipment.	12	34,416 62	40	8,090 95	42,507 57	44	5,134 54
Reservoir.	13	14,035 48	39	106 61	14,142 09		
Distribution system (credits deducted).	14-22	74,930 10	33-35	30,317 34	105,247 44	45	17,821 38
Service pipes.	23	8,992 26	43	12,035 75	21,028 01	45	9,661 49
Meters.	24-27	604 77	42	32,856 23	33,461 00	44	7,564 29
Inventories (credits deducted).	28	1,294 75	42	39,531 30	40,826 14		
Electric and gas lines.	29	1,049 39	41	40 90	1,090 29		
TOTAL NET DEBITS TO PLANT.	4	\$561,881 05		\$149,912 04	\$711,793 09		\$45,940 31
TOTAL NET CREDITS.	30	2,455 13					
TOTAL COST (Net)	4	\$559,425 92		\$149,912 04	\$711,793 09		

Original Capital —

November 3, 1880, proceeds \$200,000.00 bond issue, page 100.

July 16, 1883, sale of stock, \$250,000.00 issue authorized, page 101.

Total original investment.

October 15, 1898, increase in bond issue, page 103.

Total investment on October 15, 1898.

Total cost of plant to June 3, 1913.

Cost of plant paid from surplus.

Total cash dividends, page 104.

Total plant additions and cash dividends from surplus.

Interest on Actual Investment —

\$200,000.00 bond, 6%, 14 years (84)

\$250,000.00 bond, 5%, 15 years (75)

\$153,250.00 common stock, 6%, 27 years (162)

Net surplus over 6% (and 5%) actual cash invested.

Inventory
\$175,000 00
153,250 00

\$328,250 00
50,000 00

\$378,250 00
711,793 00

333,543 00
328,125 00

661,668 00

\$188,000 00

187,500 00

248,245 00

603,745 00

\$57,923 00

The Richmond City Water Works was incorporated May 24, 1884, and a contract was made August 9, 1884, with the S. L. Wiley Construction Company for the construction of a complete system of water works for the city of Richmond and its inhabitants. The amount paid the construction company was \$283,216.04.

Other sums were expended in additions, betterments, new construction and replacements as are indicated in the above table showing the total investment in the plant.

The plant was well constructed and has been prudently managed. There has been no exhibition of frenzied finance. In a plain businesslike way the company has diligently proceeded to perform the duties it was created to perform. It is to be commended for the manner in which it has done this. It has furnished the city of Richmond and its inhabitants an abundant supply of pure and wholesome water. The pressure for fire purposes has been sufficient at all times. There is no complaint of the character of the water now furnished.

The rate charged has been such as to bring continuously increasing revenues to the company. The salaries charged by the officials have been just and reasonable. There has been no contention that the officials have looted the treasury of the company.

The city of Richmond is a wealthy, substantial community, and has a steady growth in population. With additions and betterments now under construction the Richmond City Water Works will be a very valuable and efficient property. It will be well equipped to do its work, and will have a perfect monopoly for the sale of its services to more than 25,000 people. It has no fear of a rival, and a less hazardous investment can scarcely be imagined.

OUR ACCOUNTANTS HAVE COMPILED THE FOLLOWING DATA FROM THE AUDIT MADE, TO WIT:

Year.	Cost beginning of year.	Construction and equipment during year.	Cost close of year.	Six per cent. on investment.	Dividends paid.	N'd surplus or deficit.	Bond.	Common stock.	Preferred stock.	Interest on floating and funded debt.	Operating revenues.	Non-operating revenues.	Total revenues.	Operating expense.	Gross income.
1887	\$348,415 00	\$3,944 77	\$352,359 77	\$21,141 50	.....	\$1,860 46	\$200,000 00	\$153,250 00	.....	\$14,049 35	\$17,049 07	.....	\$17,049 07	\$4,500 18	\$12,548 89
1888	352,359 77	27,821 83	380,181 60	22,810 93	.....	4,249 19	200,000 00	153,250 00	.....	12,570 00	21,817 94	\$468 04	22,282 98	6,454 79	16,828 19
1889	380,181 65	3,354 68	383,536 33	23,012 18	.....	6,810 05	200,000 00	153,250 00	.....	13,536 53	26,329 07	300 00	26,629 07	6,232 49	20,396 58
1890	383,536 33	17,574 80	401,111 13	24,066 67	.....	7,905 57	200,000 00	153,250 00	.....	15,240 29	28,876 81	.....	29,163 62	6,730 95	22,432 67
1891	401,111 13	13,571 54	414,682 67	25,337 24	.....	7,804 04	200,000 00	153,250 00	.....	16,469 85	33,414 92	.....	33,753 92	6,562 03	27,191 89
1892	414,682 67	7,604 59	422,287 26	25,880 39	.....	11,332 67	200,000 00	153,250 00	.....	15,297 06	33,414 92	.....	33,753 92	6,785 19	26,968 73
1893	422,287 26	7,313 13	429,600 39	25,776 02	.....	13,097 27	200,000 00	153,250 00	.....	14,292 35	36,673 24	.....	37,035 59	7,263 62	29,771 97
1894	429,600 39	35,110 26	464,710 65	27,882 64	.....	15,867 51	200,000 00	153,250 00	.....	14,563 53	38,987 26	.....	39,370 79	10,830 92	28,539 87
1895	464,710 65	29,866 68	494,577 33	29,674 64	.....	5,639 56	200,000 00	153,250 00	.....	15,555 02	41,940 35	798 30	42,738 65	11,543 97	31,194 68
1896	494,577 33	6,863 50	501,440 83	30,085 53	.....	3,967 35	200,000 00	153,250 00	.....	16,874 44	44,349 23	691 21	45,040 44	11,698 65	33,341 79
1897	501,440 83	2,559 86	503,990 69	30,239 44	.....	2,148 08	200,000 00	153,250 00	.....	16,755 87	43,888 66	949 03	44,837 68	13,436 80	31,400 88
1898	503,990 69	826 36	504,817 05	30,302 73	.....	4,521 14	200,000 00	153,250 00	.....	16,635 01	46,484 81	422 20	46,907 01	13,260 86	33,646 15
1899	504,817 05	228 52	505,045 57	30,329 55	.....	246 75	250,000 00	153,250 00	.....	10,393 83	47,817 20	230 79	48,047 90	23,676 52	24,371 38
1900	505,045 57	6,072 99	511,118 56	30,955 99	.....	6,079 50	250,000 00	153,250 00	.....	13,852 83	49,902 08	.....	50,394 16	17,400 89	32,993 27
1901	511,118 56	283 89	511,402 45	30,977 72	.....	5,995 45	250,000 00	153,250 00	.....	13,481 01	53,232 15	322 04	53,564 19	16,538 99	37,025 20
1902	511,402 45	6,238 16	520,640 61	30,852 01	.....	11,034 19	250,000 00	153,250 00	.....	13,498 83	55,290 03	561 59	55,851 62	15,586 97	40,264 65
1903	520,640 61	5,472 88	526,113 49	31,177 68	.....	16,901 43	250,000 00	153,250 00	.....	13,263 71	57,880 54	2,325 53	60,206 07	17,840 95	42,365 12
1904	526,113 49	8,798 51	534,912 00	31,705 60	.....	16,046 43	250,000 00	153,250 00	.....	12,796 85	58,281 30	3,485 90	61,767 20	19,918 02	41,849 18
1905	534,912 00	3,489 48	538,401 48	31,914 96	.....	24,619 46	250,000 00	153,250 00	.....	12,552 70	59,077 43	4,983 04	64,060 47	18,112 84	45,947 63
1906	538,401 48	14,831 29	553,232 77	32,832 64	.....	23,302 77	250,000 00	153,250 00	.....	12,062 42	62,732 66	5,432 34	68,165 01	21,349 52	46,815 49
1907	553,232 77	9,358 17	562,590 94	33,665 86	.....	20,486 99	250,000 00	153,250 00	.....	11,065 61	63,881 18	5,641 95	69,523 13	23,915 83	45,607 30
1908	562,590 94	12,215 25	574,806 19	34,127 05	.....	23,456 34	250,000 00	153,250 00	.....	10,865 61	71,524 98	7,001 95	78,526 93	24,875 32	53,651 61
1909	574,806 19	22,156 99	596,963 18	35,456 34	.....	22,093 19	250,000 00	153,250 00	.....	11,327 77	78,780 65	9,035 84	87,816 49	29,077 57	58,738 92
1910	596,963 18	13,729 56	610,692 74	36,230 24	.....	27,000 00	250,000 00	153,250 00	.....	11,978 16	83,701 20	8,581 98	92,283 18	34,958 12	57,325 06
1911	610,692 74	636,960 44	.....	38,317 03	.....	15,616 90	250,000 00	450,000 00	\$350,000 00	.....	.....	.....	.....	.....	.....
1912	604,670 63	.....	.....	.....	.....	.....	.....	450,000 00	.....	.....	.....	.....	.....	.....	.....
1913	.....	.....	.....	.....	.....	.....	.....	450,000 00	.....	.....	.....	.....	.....	.....	.....
Total	\$288,535 44	.....	.....	\$803,943 93	\$328,125 00	\$279,054 28	.....	.....	.....	\$373,712 62	\$1,352,031 46	\$80,077 36	\$1,432,108 82	\$431,186 92	\$990,921 90

* Deficit.

TOTAL OPERATING REVENUES..... \$1,352,031 46
TOTAL NON-OPERATING REVENUES..... 80,077 36

TOTAL REVENUES..... \$1,432,108 82
TOTAL OPERATING EXPENSES..... 431,186 92

GROSS INCOME..... \$980,921 90
SIX PER CENT. ON INVESTMENT..... 803,943 93
BALANCE..... \$176,977 97

NATURE OF THE ACTION.

The purpose of this proceeding is to determine a just and reasonable rate to be charged by the Richmond City Water Works for services hereafter to be rendered, and to remove any unjust discriminations that may now exist in its rates.

In order to ascertain this "just and reasonable" rate it is necessary to determine:

1. The value of all the property of the water works, actually used and useful for the convenience of the public.
2. The fixed charges against the company.
3. The operating expenses of the company.
4. A depreciation fund which "will provide the amounts required over and above the expense of maintenance, to keep the property in a state of efficiency corresponding to the progress of the industry."
5. To provide a reasonable and fair return to the company where the investment is a reasonably prudent one, and the management reasonably skillful.

1. VALUATION OF THE PROPERTY.

The most important problem in the case is the determination of the value of the property. In the natural order of the case this will first be considered.

Our purpose is to ascertain the fair and reasonable value of the property, used and useful for the convenience of the public. This value must be ascertained as of the time when the inquiry is made concerning the rates. *Willcox v. Gas Company*, 212 U. S. 19; *San Diego, etc., Company v. National City*, 174 U. S. 739.

It is the simple rule of determining what under all the circumstances is reasonable and just between the rate payers and the corporation engaged in producing the service. *Spring Valley Waterworks v. City, etc., of San Francisco*, 124 Fed. 574.

In order to ascertain the fair value of the property, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its

bonds and stocks, the cost of reproduction new, the cost of reproduction less depreciation, the probable earning capacity of the property, under particular rates, the sum required to meet fixed charges and operating expenses, and, the valuation of the property for purposes of taxation, are all matters for consideration, and should be given such weight as may be just and right in each case. There may be other matters to be regarded in determining the value of the property. *Smyth v. Ames*, 169 U. S. 546; *Simpson v. Shepard*, 230 U. S. 352 (435); Act of Congress approved March 1, 1913; *San Diego Land and Town Company v. Jasper*, 189 U. S. 439 (444).

The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment, having its basis in a proper consideration of all relevant facts. *Simpson v. Shepard*, 230 U. S. 352 (435).

The Act of Congress under which the Interstate Commerce Commission is valuing the property owned by the railroads, provides the methods to be followed by that Commission. The provisions of that act are interesting and instructive, and are, in part, as follows:

"First. In such investigation said Commission shall ascertain and report in detail as to each piece of property owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

"Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

"Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

"Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stock, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

"Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States, or by any state, county, or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any state, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also, the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any state, county, or municipal government in consideration of such aid, gift, grant, or donation."

A definition of the terms used to indicate the different cost values will materially aid us.

"Actual cost" includes only construction, additions and betterments that are a proper capital charge under approved accounting principles. It is not book value inflated by financial manipulations.

"Reproduction cost" is the cost of replacing the present system by one substantially like it. *Kennebec Water District v. Waterville*, 97 Me. 185.

"Reproduction cost less depreciation" is the cost of replacing the present system by one substantially like it,

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depreciated by the impairment in value of the parts of the present plant which remain in existence and are continued in use. *Knorrville v. Knorrville Water Company*, 212 U. S. 1.

We have stated briefly the abstract principles of law involved in determining the valuation of property. We will now apply these principles to the concrete case before us.

The actual cost of the Richmond City Water Works, as shown by the records of the company, is as follows:

All expenditures to June 30, 1913.....	\$636,950 44
New work completed since that date.....	3,633 00
Improvements contracted for and uncompleted.....	51,429 00
Material and supplies.....	10,000 00
Working capital	10,000 00
TOTAL	\$712,012 44

From this there should be deducted the original cost of any replaced property. The extent of such replacement is not exactly clear from the evidence.

This money was derived from the following sources:

Common stock sold June 6, 1884.....	\$153,250 00
Stock increased from surplus June 6, 1907.....	96,750 00
Stock increased from surplus March 6, 1909.....	125,000 00
Stock increased from surplus December 21, 1910.....	75,000 00
TOTAL ISSUE OF COMMON STOCK.....	\$450,000 00
Bonds issued October 15, 1884.....	\$200,000 00
Bonds issued October 15, 1898.....	250,000 00
Preferred stock issued October 15, 1913.....	350,000 00
TOTAL ISSUE OF BONDS AND PREFERRED STOCKS.....	\$800,000 00

The \$200,000 bond issue was taken up by \$200,000 of the \$250,000 issue. The \$250,000 issue of bonds was paid by the \$350,000 issue of preferred stock.

The total capitalization is now as follows:

Common stock	\$150,000 00
Preferred stock	350,000 00
Preferred stock, unissued.....	50,000 00
TOTAL CAPITALIZATION	\$850,000 00

There was a discount on the \$200,000 bond issue of \$25,000, and on the preferred stock issue of \$10,500. Total discount, \$35,500 on bonds and preferred stocks. Of the preferred stock \$50,000 still remains in the treasury of the Water Works.

We are not able to determine from the accountants' audit of the books of the company what discount, if any, there was on the sale of the \$153,250 of common stock.

On this investment the company has earned and disbursed, or has in its treasury, above taxes and operating expenses, the following amounts:

Dividends on common stock.....	\$328,125 00
Invested surplus	296,750 00
Surplus June 30, 1913.....	106,257 19
Interest on funded and floating debt.....	373,712 62
TOTAL EARNINGS ABOVE TAXES AND OPERATING EXPENSES.	\$1,104,844 81

These earnings would appear to be sufficient to satisfy even the dreams of avarice.

The discounts on stocks and bonds, and the original cost of replaced property probably accounts for the difference between the actual investment and the capitalization.

There appears no evidence that any official or officials of this company have subverted any of the earnings of this property to their own purposes. The entire transaction appears to have been clean, honest and highly profitable.

It is our conclusion, that this company has not invested in its property, including its working capital and material and supplies, together with contracts let and yet uncompleted, more than \$712,012.44.

From the records of this company, every item of legitimate expense during the entire construction of this property is easily ascertained. The records have been kept carefully and honestly.

The actual cost of this property is a very important element of consideration. It establishes a fair presumption of the honest value of the property of the Richmond City Water Works, that is now used and useful for the convenience of the public.

In the case of *San Diego Water Company v. City of San Diego*, 118 Cal. 556, the court says:

"Nor would it, on the other hand, be just to the consumers to require them to pay an enhanced price for water on the ground, that it would now cost more to construct similar works. Such a contingency may well happen; but to allow an increase of rates for that reason would be to allow the water company to make a profit, not as a reward for its expenditures and services, but for the fortuitous occurrence of a rise in the price of materials or labor. The law does not intend that this business shall be a speculation in which the water company or the consumers shall respectively win or lose upon the casting of a die, or upon the equally unpredictable fluctuations of the markets. For the money which the company has expended for the public benefit, it is to receive a reasonable, and no more than a reasonable reward. It is to be paid according to what it has done, and not according to what others might conceivably do. In effect, the bargain between the company and the public was made when the works were constructed; and this matter is to be determined according to the state of things at that time. As we have said, it is not the water or the distributing system which the company may be said to own, and the value of which is to be ascertained. They were acquired and contributed for the use of the public. The public may be said to be the real owner, and the company only the agent of the public to administer their use. What the company has parted with — what the public has acquired — is the money reasonably and properly expended in acquiring its property and constructing its work. The State has taken the use of that money, and it is for that use it must provide just compensation."

Again, in *Wilkesbarre v. Spring Brook Water Company*, 4 Lack. (Pa.) Leg. News, 367 (380), the court says:

"The primary basis of any calculator as to the value of a water plant must be the money actually invested by the owners. If the earnings of the company have been used to improve the property it is counted as so much more cash invested."

We do not wish to be understood as approving all the principles declared in these two cases.

In the *Advance Rate* case, 20 Interstate Commerce Commission Report, 307, Commissioner Lane says:

"Perhaps the nearest approximation to the fair standard is that of bona fide investment — the sacrifice made by the owners of the property — considering as a part of the investment any shortage of return that there may be in the early years of the enterprise. Upon this, taking the life history of the road through a number of years, its promoters are entitled to a reasonable return. This, however, manifestly is limited; for a return should not be given on wastefulness, mismanagement, or poor judgment. and always there is present the restriction that no more than a reasonable rate shall be charged."

It will be observed that the amount of common and preferred stocks of this company is \$850,000. It may be fairly assumed as established by the evidence that these stocks are worth not less than the par value thereof. That this is one element to be considered by us in determining the present value of the property used and useful, for the convenience of the public is clearly established by the courts.

In *Ames v. Union Pacific Railway Company*, 64 Fed. 165 (177), the court says:

"In the cases before us, however, there is abundant testimony that the cost of reproducing these roads is less than the amount of stock and bond account, or the cost of construction, and the present value of the property is not accurately represented by either the stocks and bonds, or the original construction account. Nevertheless, the amount of money that has gone into the railroad property — the actual investment, as expressed, theoretically, at least, by the amount of stock and bonds, is not to be ignored, even though such sum is far in excess of the present value."

Cotting v. Kansas City Stock Yards Company, 82 Fed. 839.

In *Spring Valley Waterworks v. City, etc., of San Francisco*, 124 Fed. 574 (592), the court says:

"It is doubtless true that in many cases these elements may be excessive or fictitious, and represent speculative, rather than real or substantial values. But there may be cases where both stock and bonds represent in the market a present actual value in the property of the corporation."

and a value that could not otherwise be very well established. In such a case, what objection can there be to giving the evidence such consideration as, under all the circumstances, it deserves? It seems to me there can be none, and such seems to be the opinion of the Supreme Court of the United States."

Smyth v. Ames, 169 U. S. 466; *Simpson v. Shepard*, 230 U. S. 352 (435).

The stocks now outstanding issued by the Richmond City Water Works represent but little, if any, fictitious values. The face value of these stocks went into this property, less the discounts, and is now represented in such property less the original cost of replaced property.

The legal status of the invested surplus is not free from doubt. In *Brymer v. Butler Water Company*, 179 Pa. (331), the court says, that in determining the amount of the investment by the stockholders it can make no difference that money earned by the corporation, and in a position to be distributed by a dividend among its stockholders, was used to pay for improvements and stock issued in lieu of cash to the stockholders. It is not necessary that the money should first be paid to the stockholder and then returned by him in payment of new stock issued to him. The net earnings in equity belonged to him, and stock issued to him in lieu of money so used that belonged to him was issued for value and represents an actual investment by the holder.

The same principle is announced by the Supreme Court of Maine in *Kennebec Water District v. Waterville*, 97 Me. 185. We think the position of these two learned courts is, in part at least, wholly untenable.

The Supreme Court of the United States in *Knorville v. Knorville Water Company*, 212 U. S. 1 (13), says:

"1. Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide, not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of the earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired,

so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation at least, its plain duty to the public. If a different course were pursued the only method of providing for replacement of property which has ceased to be useful would be the investment of new capital and the issue of new bonds or stocks. This course would lead to a constantly increasing variance between present value and bond and stock capitalization—a tendency which would inevitably lead to disaster either to the stockholders or to the public, or both.”

In *Louisiana Railroad Commission v. Cumberland Telephone and Telegraph Company*, 212 U. S. 414 (424), the same court used this language:

“It was obligatory upon the complainant to show that no part of the money raised to pay for depreciation was added to capital, upon which a return was to be made to stockholders in the way of dividends for the future. It cannot be left to conjecture, but the burden rests with the complainant to show it. It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it, or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of property, and, having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to the stockholders. That it was right to raise more money to pay for depreciation than was actually disbursed for the particular year there can be no doubt, for a reserve is necessary in any business of this kind, and so it might accumulate, but to raise more than money enough for the purpose and place the balance to the credit of capital upon which to pay dividends cannot be proper treatment. The court below said it was impossible to find out from the books how much of this had been done, and it treated the fact as one to be explained by the Commission and not by the complainant. In other words, while this fact was a material one, the onus was placed upon the Commission, and not the complainant, to show it. We think, on the contrary, that the obligation was upon the complainant. Now, although the books, it is said, do not show how much money collected for depreciation has been, in fact, used to increase the capital of the complainant upon which dividends were paid to stockholders, yet still, even if the books do not show accurately, or even at all, what disposition was made by these moneys, at any rate the officers of the complainant must be able to make up some reasonable

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approximation of the amount, even if it be impossible to state it with entire accuracy, and this duty rests with the complainant, in order that it may discharge the duty devolving upon it to prove that the rates were not unreasonably high under Order No. 488, or, in other words, that they were unreasonably low under Order No. 552. It may be that the sum, if any, thus used was not enough to affect the claim that the rates under discussion were unreasonably low. The evidence is insufficient to show clearly that which complainant is under obligations to show. We are not considering a case where there are surplus earnings after providing for a depreciation fund, and the surplus is invested in extensions and additions. We can deal with such a case when it arises."

Section 25 of our Public Service Act does not declare a new principle of law. This section provides in substance, that the mandatory depreciation fund may be used for new constructions, extensions or additions to the property of the utility, or invested,—but if such fund is used for new constructions, extensions or additions to the property the money from such fund so expended shall never be charged to the capital account of such utility.

As it was not only the right but the duty of the Richmond City Water Works to set aside out of its earnings such a depreciation fund as would forever maintain its property in condition to render reasonably adequate services to the public, we cannot assume that it did not protect its right and perform its duty. The presumption is that a part of this invested surplus was taken from the depreciation fund so required to be set aside as aforesaid. Whatever of new constructions, extensions or additions were constructed from this fund cannot be considered a part of the capital account.

This position is not only sustained by the authorities cited, the highest court in the land, but is supported by reason. Under the law as it was, and as it now is, when this water works exacted a rate that yielded a sum sufficient to maintain an adequate depreciation fund, it was its duty to forever preserve such fund for the use of the public. It had no legal right to expend this fund for new construction, extensions or additions and then add the sum so expended to its capital account.

The amount of the depreciation fund so expended is not clear from the evidence. Farther on in this opinion we will again discuss this question.

We will now consider the final estimates made by our engineering staff, by John W. Alvord, by Daniel W. Mead and by Edwyn E. Watts, touching the cost of reproduction new and the cost of reproduction less depreciation. Each of these estimates is set out in full in an earlier part of this opinion.

We will first consider that made by our engineering staff. Professor Garman, as our chief engineer, finds the following values of this property:

Cost of reproduction, new.....	\$802,998 00
Cost of reproduction, less depreciation.....	\$723,666 00
In this estimate there is a conceded error occasioned by oversight, of the value of the Bal- linger farm	8,000 00
TOTAL PRESENT VALUE.....	\$731,666 00

Included in this estimate there is an allowance for engineering, superintendence, interest during construction, contingencies, etc., of 12 per cent., calculated on the value of the real estate, that is 12 per cent. of \$29,206.

In *Simpson v. Shepard*, 230 U. S. 352 (455), the Supreme Court said:

"We also think it was error to add to the amount taken as the present value of the lands the further sums calculated on that value, which were embraced in the items of 'engineering, superintendence, legal expenses,' 'contingencies,' and 'interest during constructions.'"

This correction would decrease the present value as found by our staff \$3,404.72 on this item.

There is also included in the estimate of our staff an item for paving in streets, \$42,746.

The company expended for paving over mains \$1,829.

Total included in the appraisalment which was not paid for by the company, \$40,917.

It was error to include this item.

In determining this question the Court of Appeals of

New York on the twenty-fourth day of March, 1914, in *People ex rel. v. Willcox et al.*, said:

"In determining the cost of reproduction the Commission allowed \$12,717 as the cost of restoring the pavement as it existed when the mains and service pipes were laid in the streets. The relator claimed an allowance of at least \$200,000, for the cost of restoring pavements subsequently laid on the theory that that cost would have to be incurred if the mains were to be laid to-day. But the new pavements in fact added nothing to the property of the relator. Its mains were as serviceable and intrinsically as valuable before as after the new pavements were laid. The controlling considerations under the preceding point also determine this. The rights of the public are not to be ignored. The question has a double aspect. What will be fair to the public as well as to the relator? (*Smyth v. Ames*, supra.) Should the public pay more for gas simply because improved pavements have been laid at public expense? It is no answer to say that the new expensive pavements suggest improved conditions which, though adding to the value of the plant, will not, by reason of the greater consumption, add to the expense per thousand feet of the gas consumed. The public are entitled to the benefit of the improved conditions, if thereby the relator is enabled to supply gas at a less rate. The relator is entitled to a fair return on its investment, not on improvements made at public expense. It is said that the mains will have to be relaid. So will the new pavements, and much oftener. Both might possibly be relaid at the same time. The case is not at all parallel to the so-called unearned increment of land. That the company owns. It does not own the pavements, and the laying of them does not add to its investment or increase the cost to it of producing gas. The cost of reproduction less accrued depreciation rule seems to be the one generally employed in rate cases. But it is merely a rule of convenience and must be applied with reason. On the other hand it should not be so applied as to deprive the corporation of a fair return at all times on the reasonable, proper and necessary investment made by it to serve the public, and on the other hand it should not be so applied as to give the corporation a return on improvements made at public expense which in no way increase the cost to it of performing that service."

In *Des Moines Gas Company v. City of Des Moines*, 199 Fed. 204 (208), the court said:

"There are many instances in which the reproduction theory is the best of all methods for getting at the present value, and in other instances the most misleading. And it is deceptive, in my opinion, to now add the cost of taking up and replacing pipe under paved streets at an estimated cost of \$140,000 extra. and does not warrant an increased dividend of

\$8,400 or some greater sum. Such a dividend is a mere paper dividend, and is arrived at, not because of increased earnings, not because of increased capital or investments, not because of increased operating or maintenance expenses, but solely by reason of a supposed necessity of at some time, in some manner, under a then some kind of street, on a mere guess of what labor and material would then cost. * * * Finally, pipes under a paved street are of very long life, many times longer than if the streets were not paved. The theory applied to paved streets is but a theory, is illogical and against facts, and was properly denied by the master."

In the estimate made by our staff one item included is known as services. By this we understand is meant the small pipe leading from the water main in the street to the property line of the consumer. The present value of this item is estimated at \$55,527. The audit shows that the total cost of installing the services was \$56,373.03.

There appears to have been a rule with the water works by which the consumer or user of the service was required to pay a charge of \$10.00 for the installation of the service, that is, each consumer paid the water works the sum of \$10.00 for laying the service pipe from the main in the street to the property line of the consumer. Under this rule the consumers paid \$35,345.02. As the present value of these services approximately shows nearly the actual cost, we will assume that they are the same.

Technically, the consumers paid five-eighths of the cost of the services and the company paid three-eighths. The question very naturally arises whether, under these circumstances, this five-eighths of the actual cost of the services that was paid by the consumers should be included in the reproduction new or the reproduction new less depreciation value of the property of the water works. These services are used and useful for the convenience of the public and are a part of the company's plant, and from this view of the matter would appear to be properly included as a part of the plant to be reproduced and finally included in the valuation of the property.

The courts are not clear as to what disposition should be made of this property so donated or given to the company.

In *San Joaquin & Kings River Canal & Irrigation Company v. Stanislaus County*, 191 Federal Reporter, 875 (886), the principle here involved was discussed, where the property involved was 286 miles of fences along the canals of the company. The proof showed that the fences had been built by the adjoining landowners. In discussing this question the court said:

“The master held that the inquiry he was called upon to make was the cost of reproducing the plant at the time the rates in question were fixed, and that such cost of reproduction must be applied to the property that was owned by the complainant. He was of the opinion, that if the fences had not been built by the complainant, it would not be entitled to have them valued as a part of its property. I see no reason for sustaining the exception to this finding.”

In *San Diego Water Company v. San Diego*, 118 Cal. 556 (574), the court said:

“It may be added that when, as appears to have been the case in this instance, portions of the company's expenses are specifically repaid by the consumers, such expenses should be eliminated from the computation. This will apply at least to the ‘taps’ put in for private consumers.”

In *Washington Gaslight Company v. District of Columbia*, 161 U. S. 316, 326, Justice White, speaking for the court, said:

“As the service pipe and stop cock was a part of the apparatus of the company and was used for the purpose of its business, it is entirely immaterial who paid the cost, or might in law, on the cessation of the use of the service pipe and gas box by the company, be regarded as the owner of the mere materials.”

This question arose in the case last cited out of an injury inflicted on a passenger along the street who was alleged to have been injured by stepping into a certain deep and dangerous hole in the sidewalk of one of the streets in the city of Washington. The defense of the Gas company was that the deep and dangerous hole was occasioned by the consumers permitting the gas box to become out of repair. The service pipe and gas box had been put in or had at least been paid for by the consumers.

The point really decided in the case was, that it was immaterial who paid for the service pipe and stop cock, as it was clearly the legal duty of the Gas company to maintain the same in such a condition that they would not render the street unsafe for travel.

When the act hereinbefore set out was enacted, it is evident that Congress had in mind the fact that property given, granted or donated by the general government or by any State to railroads, had a peculiar legal status. The fifth provision of the act requires the Commission to ascertain and report the amount and value of any aid, gift, grant of right of way, or donation made to any such common carrier or to any private corporation operating such property, by the government of the United States, or by any State, county or municipal government, or by individuals, associations or corporations; further provisions are made for determining the amount and value of all such property given, granted or donated by any municipality, State or by the government of the United States.

It may be proper in arriving at the cost of reproduction new and the cost of reproduction new less depreciation to include in such estimate the cost of reproducing service pipes paid for or donated by the consumers. Yet it ought to be constantly kept in mind that the whole theory of the cost of reproduction new and the cost of reproduction new less depreciation is that it is but one process by which to determine a single item of evidence to be weighed by us in determining the present value of the water works.

It is not the theory of the engineers nor of the courts that this cost of reproduction new and the cost of reproduction new less depreciation is a safe guide of itself alone in determining the actual value of such property.

With this fact in mind, strengthened by the enactment of Congress above referred to, it is clear that in arriving at the actual value at this time of the property of the water works, consideration must be given to the fact that practically five-eighths of the present value of the services as shown by our engineering staff was not paid for out of

the revenues of this company. It has not the same right in this five-eighths that it would have if the whole of the services were paid for by it.

The total corrected appraisalment of our staff is..... \$731,666 00

From this should be deducted the following:

12 per cent. of the present value of the real estate \$3,404 72

Pavement over mains not paid for by water

works 40,917 00

44,321 72

Leaving the true amount of such appraisal..... \$687,344 28

This leaves the value of services paid for by consumers yet to be disposed of.

In the final estimate of the property of the Richmond City Water Works, prepared by John W. Alvord, the present value of the property is found to be \$924,305. In this total is included \$122,059 as "going value."

This idea of "going value" appears to have originated in the case of the *National Waterworks Company v. Kansas City*, reported in the 62 Federal, Page 853 (865). This was a suit to determine the value of the water works where the city was purchasing the same. In determining this case Judge Brewer said:

"The original cost of the construction cannot control, for 'original cost' and 'present value' are not equivalent terms. Nor would the mere cost of reproducing the waterworks plant be a fair test, because that does not take into account the value which flows from the established connections between the pipes and the buildings of the city. It is obvious that the mere cost of purchasing the land, constructing the buildings, putting in the machinery, and laying the pipes in the streets—in other words, the cost of reproduction—does not give the value of the property as it is to-day. A completed system of waterworks, such as the company has, without a single connection between the pipes in the streets and the buildings of the city, would be a property of much less value than that system connected, as it is, with so many buildings, and earning, in consequence thereof, the money which it does earn. The fact that it is a system in operation, not only with a capacity to supply the city, but actually supplying many buildings in the city,—not only with a capacity to earn, but actually earning,—makes it true that 'the fair and equitable value' is something in excess of the cost of reproduction. The fact that

the company does not own the connections between the pipes in the streets and the buildings — such connections being the property of the individual property owners — does not militate against the proposition last stated. for who would care to buy, or at least give a large price for, a waterworks system, without a single connection between the pipes in the streets and the buildings adjacent. Such a system would be a dead structure, rather than a living and going business. The additional value created by the fact of many connections with buildings, with actual supply and actual earnings, is not represented by the mere cost of making such connections. Such connections are not compulsory, but depend upon the will of the property owners, and are secured only by effort on the part of the owners of the waterworks, and inducements held out therefor. The city, by this purchase, steps into possession of a waterworks plant,—not merely a completed system for bringing water to the city, and distributing it through pipes placed in the streets, but a system already earning a large income by virtue of having secured connections between the pipes in the streets and a multitude of private buildings. It steps into possession of a property which not only has the ability to earn, but is in fact earning. It should pay therefor not merely the value of a system which might be made to earn, but that of a system which does earn. Our effort has been to deduce from the volume of testimony that which, in this view of the situation, can be safely adjudged 'the fair and equitable value.' The original cost of the works is not accurately and satisfactorily shown."

In *Omaha v. Omaha Water Company*, 218 U. S. 180 (202), Justice Lurton said:

"The option to purchase excluded any value on account of unexpired franchise; but it did not limit the value to the bare bones of the plant. its physical properties, such as its lands, its machinery, its water pipes or settling reservoirs, nor to what it would take to reproduce each of its physical features. The value in equity and justice must include whatever is contributed by the fact of the connection of the items making a complete and operating plant. The difference between a dead plant and a live one is a real value, and is independent of any franchise to go on, or any mere good will, as between such a plant and its customers. That there is a difference between even the cost of duplication, less depreciation, of the elements making up the water company plant, and the commercial value of the business as a going concern, is evident."

In *Pioneer Telephone and Telegraph Company v. Westenhaver*, 118 Pacific, 354 (360), the Supreme Court of Oklahoma said:

"It is apparent, however, that a complete telephone plant, without a single subscriber, or with but few subscribers, is less valuable both to the

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owner of the plant and to the members of the public it serves, than the same plant with a larger patronage. The more people a subscriber can communicate with over a telephone exchange, the more service as a general rule, is such exchange to him; and it is only when such exchange has subscribers that the property of the owner invested therein has an earning power. But subscribers are not obtained without expenditure of money, labor and time, during which the capital invested in the plant earns nothing, and often fails to pay operating expenses. The customers must be connected with the system of the plant; trained employees must be obtained; and a system of operation must be established. Few industries, if any, involving an investment of \$90,000, or more, can be made self-sustaining from the first day of their operation. The contradicted evidence in this case discloses that appellant's plant, for the years preceding the first hearing, failed to produce revenue sufficient for operating expenses, current repair, and lay aside an amount for depreciation. During the time of development, there is a loss of money actually expended and of dividends upon the property invested. * * * When the use of the property and the expenditures made during the non-expense-paying and non-dividend-paying period of the plant are treated as an element of the value of the property upon which fair returns shall be allowed, then the burden is distributed among those who receive the benefits of the expenditures and the use of the property in its enhanced value."

In fixing gas rates in the territory supplied from the Paterson Gas Plant, the Board of Public Utility Commissioners of New Jersey allowed the Public Service Gas Company "going value" in the sum of \$1,025,000. This was 30 per cent. of the structural cost. The cities of Paterson and Passaic appealed the case to the court, and the case as decided by the Supreme Court of New Jersey, reported in the 87 Atlantic, Page 651, affirmed the allowance made by the Board of Public Utility Commissioners as to the "going value" of the gas plant. The case was decided by the court July 7, 1913.

In the recent case decided by the New York Court of Appeals and heretofore referred to, the question of "going value" is very fully discussed, and the court found in that case that "going value" should be allowed. In the decision the Court of Appeals used this language:

"What then, is 'going value,' and how is it to be appraised? It takes time to put a new enterprise of any magnitude on its feet, after the con-

struction work has been finished. Mistakes of construction have to be corrected. Substitutions have to be made. Economies have to be studied. Experiments have to be made, which sometimes turn out to be useless. An organization has to be perfected. Business has to be solicited and advertised for. In the case of a gas company, gratuitous work has to be done, such as selling appliances at less than a fair profit and demonstrating new devices to induce consumption of gas to educate the public up to the maximum point of consumption. None of these things is reflected in the value of the physical property, unless, of course, exchange value be taken, which is not admissible in a rate case. The company starts out with the 'bare bones' of a plant, to borrow Mr. Justice Lurton's phrase in the *Omaha Water Works* case, *supra*. By the expenditure of time, labor and money, it co-ordinates those bones into an efficient working organism and acquires a paying business. The proper and reasonable cost of doing that, whether included in operating expenses or not, is as much a part of the investment of the company as the cost of the physical property. * * * The first question, therefore, to determine on this branch of the case was whether the company had already received a fair return on its investment. If it had received such return from the start, or if in later years it had received more than a fair return, the public would already have borne the expense of establishing the business in whole or in part, and to that extent the question of 'going value' for the purpose of fixing a present rate would be eliminated; for it must constantly be kept in mind in dealing with this problem that the company is entitled to a fair return and no more. If it has already had it, that is the end of the matter. If it did not receive a fair return in the early years owing to the establishment of the business, a subsequent rate must allow for that loss or it will be confiscatory. Now, no dividends appear to have been paid by the original company or by the relator prior to 1907. Assuming a reasonable need of the service from the start, and that the failure to pay dividends was not due to bad management, an accumulation of a surplus or undivided profits, the investment of earning in permanent additions or betterments allowed for in the structural valuation, or to other causes besides those under consideration, none of which is asserted, it would seem plain that 'going value' was an element in this case which the Commission was required to determine in making an appraisement on which to compute the fair return to which the company is entitled."

We have not had our attention directed to a rate making case determined by the Supreme Court of the United States, where this item of "going value" has been determined. In the case of *Knoxville v. Knoxville Water Com-*

pany, 212 U. S. 1 (9), Justice Moody, speaking for the court, said:

"It, 'the valuation,' was made up by adding to the appraisalment, in minute detail of all the tangible property, the sum of \$10,000 for 'organization, promotion, etc.,' and \$60,000 for 'going value.' The latter sum we understand to be an expression of the added value of the plant as a whole over the sums of the values of its component parts, which is attached to it because it is in active and successful operation and earning a return. We express no opinion as to the propriety of including these two items in the valuation of the plant for the purpose of rate making for which it is valued, in this case, but leave that question to be considered when it necessarily arises."

The theory of the New York decision appears to be that "going value" is a term used to represent the early losses of the company while building up its business. The decision makes it clear beyond cavil that where such expenditures and early losses have been reimbursed by years of successful operation of the plant yielding a fair and reasonable return on the total investment from its inception, that the early, unrequited losses and expenditures have been fully paid by the people. Under such circumstances and to that extent the question of "going value" is eliminated.

The Federal cases cited appear to add an additional meaning to the term "going value." As cited above, Justice Moody understands "going value" to be an expression of the added value of the plant as a whole over the sums of the values of its component parts, which is attached to it because it is in active and successful operation and earning a return.

These different views of the courts are not incapable of being harmonized. Each is a definition of the term "going value" as the same is applied to a different aspect of the evidence. As the expert witnesses, Alvord and Mead, used the term "going value" or development cost, it has a meaning more nearly akin to the views of the New York decision than to the Federal decisions.

We are not certain that we fully comprehend the process of reasoning by which these gentlemen arrive at their conclusion. To them "going value" is a peculiar and strange mental concept. While we may not understand the full scope and import of their theory, we flatter ourselves that we do understand the result of the application of the theory of these gentlemen in arriving at "going value."

The result, as applied by Mr. Alvord, is to add to the completed structural value of the property the sum of \$122,059, and as applied by Mr. Mead the result of the theory is to add to the structural value of this property \$113,980.

The mental athletics employed by these gentlemen in the development of their theory of "going value" is somewhat shrouded in mystery, but the results are plain and manifest.

In so far as "going value" represents unrequited losses of the lean years of this plant, the splendid profits made honestly throughout its career have certainly most fully and completely eliminated it.

In so far as the term "going value" represents the difference between the completed plant without use of its service and the same property with a full demand for its service, it is very difficult to define. However, the fact that it is difficult to define does not release us from its consideration.

In this particular case all the labor and money expended in securing the business has been paid for by the public. Whatever money was expended for labor or for anything else in building up the business of the water works was paid for out of money earned by the plant, and it was charged as operating expenses. The water works exacted a rate that yielded satisfactory returns on the investment, accumulated a very handsome profit and yet left a sum sufficient to pay all operating expenses, including the money expended in developing and securing the business. As the public has once paid this entire expense we see no reason why it should now be added to capital account in the form of going value.

We are satisfied that the estimates for preliminary expenses, engineering, contingencies and interest during construction are largely in excess of what ought to be allowed. It is legitimate to charge to the capital account whatever is reasonably necessary for these expenditures. The money expended for these particular items of property, including promotion, must be taken into account in determining the value of this property. Otherwise it would be lost to the investors. But this rule ought to be measured by the reasonable necessity of each particular case and ought not to be extended beyond the reason for it.

It appears from the audit of the records of this company that each one of these items was taken into consideration, the amount expended therefor carefully noted and the total added to the capital account of the company at the time the expenses were incurred.

From June, 1884, to July 1, 1887, a period of more than three years, the company expended for organization, sundries, attorneys, civil engineers, interest and discount, coupon interest, and for many other items the sum of \$50,564.84.

In determining the value of this property, or even in determining the reproduction cost of this property, what reason is there to enter the realm of conjecture when the records disclose the truth? We think there is none.

In the estimate of Alvord there is an item of pavement over mains, \$54,617. The money actually expended was \$1,829, and this estimate should be reduced to that amount.

In the estimate of Mead there is an allowance of \$56,942 for paving over mains. This ought to be reduced to \$1,829.

Alvord finds the value of lands and water rights to be \$45,996 and Mead estimates the same property at \$46,018. We are satisfied that the estimate made by our engineering staff is much nearer the actual value of the property.

In Alvord's appraisement the following deductions should be made:

"Going value"	\$97,000 00
Contingencies, engineering, etc.	123,088 00
	<hr/>
	\$220,088 00
There should be added the item for preliminary expenses, interest during construction, engineering, etc.	50,564 84
	<hr/> <hr/>

Again we are entitled to take into consideration the valuation of the property for the purposes of taxation. Where such valuation is sworn to by the officers of the company it is an item of evidence which the rate making body is not only entitled to consider but is bound under the law to weigh in determining the fair value of this property. *San Diego Land & Town Company v. Jasper*, 189 U. S. 438 (444).

This property is assessed for \$215,000. We are willing to concede that this valuation, for the purposes of taxation, is not a controlling feature in determining the value of this property, but it does look somewhat anomalous and inconsistent that while the Richmond City Water Works is called upon to answer under oath as to the fair value of this property when such property is being assessed for taxation, it should give it a valuation of \$215,000, and a short while thereafter when the same water works is wanting the Commission to fix a rate that it shall levy upon the users of its service, it should insist that that property is worth more than \$1,000,000. We feel that it is our duty to give some weight to this item of evidence.

After taking into consideration the actual cost of this property as shown by the records of this company, the cost of its reproduction new, the cost of its reproduction new less depreciation, the amount for which it is valued for purposes of taxation and all the other evidence in the case, it is our judgment that the fair and reasonable value of this property for rate making purposes is \$750,000. In this estimate we have included \$10,000 for material and supplies and \$10,000 for working capital, and that there is included in this sum the contract for new improvements

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not yet completed, which improvements are to cost \$51,429 and \$25,000 for "going value."

Based on the system of classification of our engineering staff and including in the estimate the two contracts increasing the value of the transmission and distribution system \$63,206, we have arrived at the following conclusions as to the value of the property of the water works:

A. Land	\$37,206
B. Transmission and distribution system.....	428,202
C. Buildings and miscellaneous structures.....	65,000
D. Plant equipment	100,000
E. General equipment	20,000
F. Paving	1,829
G. Material and supplies.....	10,000
H. Working capital	10,000
I. "Going value".....	25,000
J. Allowances to cover engineering, superintendency, interest during construction, etc.....	52,763
TOTAL.....	\$750,000

We have arrived at the above estimate by studying the evidence and applying it specifically to the report of our engineering staff. From the estimates of our engineering staff we have made the following reductions:

1. Paving not paid for by water works.....	\$40,917
2. Services paid for by consumers.....	34,704
3. Excess for allowances for contingencies, engineering, superin- tendence, interest during construction, etc.....	21,768
4. Error in computing 12 per cent. on value of land.....	3,404
5. Excess of material and supplies.....	6,973
TOTAL.....	\$107,766

We have increased the value of the staff in the light of the evidence of other experts and other testimony relevant to that issue as follows:

1. Error in appraisal of water rights.....	\$8,000
2. Additions to transmission system completed after the appraisal and before the hearing.....	11,777
3. Additions to transmission system, contracted for after the appraisal and not yet entirely completed.....	51,429
4. Increase in valuation of transmission system.....	9,069
5. Buildings.	4,035
6. Plant equipment	4,021
7. General equipment	8,573
8. Allowance for engineering, superintendency, interest during construction, etc., in excess of the audit.....	2,196
9. Working capital	10,000
10. "Going value".....	25,000
TOTAL ADDITIONS	\$134,100

It is due to our engineering department to state that the value of paving is given at \$42,746 as it now is over all the mains of the company, and the report also shows that the actual value of the pavement cost by the company is \$1,829; the reduction of \$34,704, showing the value of the services paid for by consumers, is not really a question for the engineering department. The estimate made by our staff for interest during construction and preliminary expenses is based on the uniform practices of the Railroad Commission of Wisconsin. We have departed from it in the light of the clear proof established by the audit of the records of this company. The other decreases are self-explanatory.

The increases in the estimates made by our staff are in a large measure due to matters over which our employees had no control. There was on the hearing a controversy that water rights of the value of \$8,000 were omitted. We have allowed that to the company. The proof is clear and undisputed that after the completion of our appraisal a contract had been let and completed under which new construction of the value of \$11,777 had been added to the transmission system; another contract for new construction to the same system of the value of \$51,429 had been let and a very large part of the work had been completed. In an effort to harmonize the evidence we have increased

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the value of the transmission system \$9,069 over the value fixed by our employees.

We have also added to buildings \$4,035; plant equipment, \$4,021; general equipment, \$8,573; \$10,000 working capital and \$25,000 for "going value" were not included in the appraisal of this property by our engineering staff; neither of these matters were referred to in such report.

This result is far from the conclusions arrived at by either of the other three gentlemen who valued this property. In our judgment, Mr. Alvord, who fixed the value of this property with the additions made by the contract yet uncompleted at \$980,000 (see Alvord's Report, Page 49), is far above the real actual value of this property. Professor Mead outdoes Alvord by a good many thousand. We cannot concede that the estimates made by these gentlemen are reasonable. Mr. E. E. Watts, in the judgment of the Commission, is equally violent in his conclusions. His estimate of the value of this property is, in our judgment, far below its real value.

Each of these gentlemen was representing his client to the best of his ability. Each threw much light on the controversy. Out of the conflict in the testimony we have arrived at the result hereinabove set out touching the value of this property.

Our conclusions are based upon a careful analysis of all the evidence touching the subject of the value of the property, and we are confident that our conclusions are approximately correct.

It is, therefore, considered by the Public Service Commission of Indiana, that all of the property of the Richmond City Water Works that is used and useful for the convenience of the public ought to be, and the same now here is valued at the sum of \$750,000, and that this includes the value of new improvements contracted for and not yet completed, which improvements will cost \$51,429 and "going value" in the sum of \$25,000.

The improvements contracted for at a cost of \$51,429 are specifically and definitely described in respondent's

Exhibit "A," introduced in evidence on the hearing of this cause.

DETERMINING THE RATE.

We have now established the fair and reasonable value of the property of the Richmond City Water Works for rate making purposes. In an orderly procedure we have now to determine,

2. The fixed charges against the company.
3. Operating expenses.
4. A proper depreciation fund.
5. A reasonable and fair return to the company on the value of its property as above found.

2. FIXED CHARGES.

The only fixed charge against this property is taxes. The property was assessed for \$215,000, upon which taxes were paid in the sum of \$5,761.96.

In the brief filed by the water works, it is contended, that the fixing of the true value of this property by the Commission will increase the taxes 75 per cent. of the difference between \$215,000 and the value of the property as determined by the Commission. We do not think that the taxes will be increased to this extent. It ought to be kept in mind that the management of this company has shown marked ability in dealing with the tax officers. We think it would be unfair to assume that in subsequent dealings with these officials the management will totally lose its ability to so manage its affairs that the State will not get more than its just share of taxes from this company. We feel that \$10,000 would be a very just and liberal allowance for the total charge for taxes.

3. OPERATING EXPENSES.

It is also insisted that the expense required by the accounting system prescribed by this Commission will add \$1,500 per annum to the company and require additional salaries in the sum of \$1,800. We think this position is

wholly untenable. That it is not justified by the evidence and that such a conclusion is wholly unwarranted. It would be a deplorable situation if the change in the system of bookkeeping would add \$3,300 per annum to the expenses of this utility. We do not believe that the system of bookkeeping adopted by this Commission will add any appreciable amount to the bookkeeping heretofore in use by this company. It is true that this company is required by the Commission to conform its system of accounting to the Uniform System of Accounting prescribed by the Commission.

This system has been developed by the National Association of Water Utility Accountants, and has been modified from time to time by such accountants until it to-day presents the most accurate, economical and perfect system of accounting that has been devised.

It fills the double purpose of accurately recording the income and expense of the operation of these utilities, and of establishing the unit cost of producing the service produced by these utilities. Section 29 of our statute requires these utilities to report the unit cost of producing the service. The purpose in this is twofold.

1. When followed but a short time it will demonstrate the economy that utilities may employ.

2. The public has an absolute right to know what the cost of producing the service produced by the Richmond City Water Works actually is.

This is the only means by which a just and equitable rate, one that is fair both to the utility and the people, can be ascertained. So long as the actual cost of production can be shrouded in mystery, there is no method by which a just rate can be determined. Forms have been prepared by the experts employed by the Commission to meet the requirements of this statute.

The only possible additional expense that this accounting system can add to the operation of this utility is the difference between the cost of the records heretofore kept by this company and the cost of those required to be kept hereafter.

It appears from the report of the examiners of the books of this company that the records have been so kept that much of the information hereafter required can now be ascertained. This means that the company has already kept a system of books very full, very complete, and quite as expensive as those hereafter required to be kept. But in order that justice may be done to this utility in this particular, we have concluded to allow for extra expenses occasioned by the accounting system prescribed by the Commission, and additional salaries thereby required, the sum of \$360 per annum. We think no more ought to be allowed, and in any period of five years we are satisfied that this allowance will more than liquidate the increased expense.

An examination of the audit returned by our accountants disclosed the following facts:

The proportion of operating expense to operating revenue has steadily increased. This is established by the following table:

THE PER CENT. OF OPERATING EXPENSE TO OPERATING REVENUE WAS:

In 1904.....	.3082
In 1905.....	.3418
In 1906.....	.3066
In 1907.....	.3170
In 1908.....	.3401
In 1909.....	.3472
In 1910.....	.3478
In 1911.....	.3457
In 1912.....	.3592
In 1913.....	.4227

It will be observed that while there is a general upward tendency of operating expense, the year 1913 shows an upward leap of more than 6 per cent.

The following table shows that the increase in per cent. of operating expenses to operating income is largely due to the item of repairs:

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COMPARATIVE STATEMENT OF EXPENSES FOR FOUR YEARS.

<i>Pumping:</i>	1913	1912	1911	1910
Wages	\$4,487 04	\$4,396 78	\$4,417 93	\$3,655 08
Fuel	3,265 84	3,516 96	3,531 36	2,785 41
Oil, waste and packing	257 31	166 18	333 23	118 45
Tools and fittings	47 61	80 98	45 54	53 69
Miscellaneous	77 02	153 73	79 85	143 00
Repairs	1,596 79	523 00	73 58	49 55
Compound and grease	73 29	46 12	57 20	35 10
Water supply expense	161 42	119 86	246 32	342 78
Inspection water supply	13 50	39 60	30 00	205 41
Repairs water supply	998 93	42 45	795 57	163 06
	<u>\$10,979 65</u>	<u>\$9,088 66</u>	<u>\$9,650 58</u>	<u>\$7,553 33</u>
<i>Distribution:</i>				
Inspection	\$21 30	\$254 71	\$31 25	\$1 30
Resetting meters	22 98	9 37	34 33	47 49
Turning off and on	120 40	178 60	121 44	65 05
Locating valves	115 32	10 21	18 48	10 35
Miscellaneous	31 92	28 87	50 29	17 01
Inspection, main, valve and hydrants	97 25	27 37	31 85	110 89
Repairs, main, valve and hydrants	1,417 15	712 76	346 13	500 51
Repair services	2,708 35	1,678 08	840 01	723 19
Repair curb boxes	153 75	156 23	202 26	191 28
Repair meters	1,185 96	1,039 79	724 03	665 95
Repairs, miscellaneous	37 66	3 25	52 61	95 98
	<u>\$5,912 02</u>	<u>\$4,099 24</u>	<u>\$2,482 68</u>	<u>\$2,428 70</u>
<i>Commercial:</i>				
Salaries	\$2,111 84	\$1,876 96	\$1,768 61	\$1,338 87
Reading meters	285 20	319 71	238 19	226 15
Postage	29 44	155 88	85 25	24 86
	<u>\$2,426 48</u>	<u>\$2,352 55</u>	<u>\$2,092 05</u>	<u>\$1,589 88</u>
<i>General:</i>				
Salaries, officers and directors	\$4,400 00	\$4,400 00	\$4,400 00	\$4,400 00
Traveling expenses	49 60	107 05	62 75	27 05
Dues, subscriptions and papers	155 78	68 10	299 75	49 68
Supplies	53 19	14 80	56 32	.....
Legal	395 55	300 00	600 00	1,100 00
Donations	121 80	435 00	90 20	63 87
Miscellaneous office	92 84	18 85	19 42	65 80
Rent .....	.....	.....	35 14	82 50
Light, heat and electricity	93 19	109 60	80 69	113 27
Telegraph and telephone	73 95	58 37	69 55	64 02
Miscellaneous, general	786 30	506 93	1,514 04	1,285 59
	<u>\$6,222 20</u>	<u>\$6,018 70</u>	<u>\$7,227 86</u>	<u>\$7,252 01</u>
<i>Undistributed:</i>				
Furniture and fixtures inventory .....	.....	.....	\$10 75	\$36 69
Tools, loss in inventory	\$435 23	\$166 00	101 76	551 23
Printing and stationery	174 51	126 24	77 68	119 78
Advertising	435 66	122 88	8 90	28 98
Repairs, tools and vehicles	258 03	184 88	121 69	151 17
Barn and livery	1,141 87	908 32	411 77	345 77
Shop labor	611 51	525 66	352 36	245 66
Shop supplies	52 34	18 14	40 70	25 16
Insurance	546 63	351 03	348 38	274 18
	<u>\$3,655 81</u>	<u>\$2,404 05</u>	<u>\$1,473 99</u>	<u>\$1,781 62</u>

An examination of this table will show that under the head of repairs under pumping there is an increased expense of \$2,030.29. Under the head of distribution, there is an increase of \$1,912.74 for repairs. Under these two heads the increased expenditure in 1913 over 1912 is \$3,943.03. This would indicate that in the year 1913 the expenditure for repairs was either extraordinarily high,

or the expenditures for renewals, replacements or betterments were classified and accounted for as repairs. The evidence discloses no unusual or extraordinary conditions in 1913, that would make the item of repairs abnormally high. But if there were extraordinary conditions that produced unusual outlay for repairs to the pumping and distribution system, it ought not to be charged wholly to any one year. Such a condition is properly cared for under our accounting system by following the directions set forth under the title of "Extraordinary Contingencies."

For operating expenses we think \$25,360 per annum will be a sufficient estimate.

In the brief filed by the water works a fund of 1 per cent. is asked to be set aside as depreciation; $\frac{4}{5}$ of 1 per cent. of the value of the property as heretofore fixed is a reasonable estimate for depreciation.

RETURN ON INVESTMENT.

The rate of return on the value of the property that is used and useful for the convenience of the public cannot be determined by any formula or fixed rule. Each case must be governed by its peculiar facts, otherwise justice might not be done between the people and the utility.

In a former part of this opinion the source of the funds invested in this property are clearly set forth. It will be observed by an examination of these facts, that about \$300,000 put into this property by the water works was derived from the revenues earned by the company in excess of a reasonable return on the investment, fixed charges and operating expenses. It will be further noted that there has been invested in this plant something more of the depreciation fund than has been accounted for on the books of this company. It is admitted by the water works that about \$35,000 of the cost of the service pipes was paid for by the consumers. The entire present value of these service pipes is estimated in the property, the value of which is fixed at \$750,000.

A rate of return on the value of the property must be fair both to the user and to the investor. The rate the

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consumers must pay for the service furnished by this water works cannot be justly determined without considering the source from which the investments in this property came.

The investors in this property have put in it about \$712,012.44; \$300,000, or thereabouts, represents an invested surplus over and above reasonable earnings, fixed charges and operating expenses. About \$35,000 of it represents a pure gratuity, a donation, an aid wrenched from the consumers by an unjust rule, and in excess of said \$712,012.44.

If the total actual cost of this plant had been taken from the pockets of the investors, and invested in this property, it would be entitled to a higher rate of interest, or a higher return than it is entitled under the present condition.

Viewing this property, the source from which the investments therein were derived, keeping in mind the interest of the public, and keeping in mind the interest of the investors, who are the owners of this property, we are satisfied that a net return of 6 per cent. on the value of this property as hereinbefore found is sufficiently large.

This does not mean that this company shall earn but 6 per cent., but it means that this company shall receive 6 per cent. net on the value of its property as we found the value to be. After the payment of all taxes, of all operating expenses, and after setting aside such a depreciation account as in the lifetime of the plant would rebuild it, it is still permitted under this calculation to earn 6 per cent. We think, under the circumstances of this case, that this is ample.

We find, therefore, that provision must be made to levy upon the users of the service of this utility such a rate as will yield money enough to pay the following items:

1. Taxes.	\$10,000
2. Operating expenses	25,360
3. Depreciation.	6,000
4. Interest at 6 per cent. on \$750,000.	45,000
	<hr/>
	\$86,360

As nearly as it can be arrived at from the evidence, the Richmond City Water Works has 3,272 meter users, 2,000 flat rate users. These are distributed as follows:

Residence consumers	4,798
Stores.	120
Barber shops	8
Lodge rooms	9
Churches.	17
Hotels.	13
Factories.	81
Elevators.	5
Street sprinklers	2
Breweries.	2
Schools.	3
Y. M. C. A.	1
Court house	2
Railroads.	11
Traction lines	2
Banks.	3
Libraries.	1
Garages.	4
Office buildings	8
Flats.	50
Saloons.	39
Postoffice.	1
Parks.	1
Orphans' home	1
Dry cleaners	2
Greenhouses.	6
Photo galleries	2
Theaters.	4
Colleges.	2
Cemeteries.	2
Hospitals.	1
Livery stables	14
Laundries.	4
City of Richmond.	1
GRAND TOTAL	5,298

The revenues of the water works for 1913 were as follows:

Operating revenue	\$82,701 20
Non-operating revenue	6,851 98
	<hr/>
TOTAL.	\$89,553 18
	<hr/> <hr/>

It would appear from an examination of the report of the accountants that there was a constant annual increase in the operating revenues of the company, and that the non-operating revenues of 1913 were far below the average return from this source.

The following table shows the revenues of the company from 1904 to 1913:

Revenues for 1904:

Operating.	\$57,880 54
Non-operating.	2,325 53

TOTAL.	\$60,206 07
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Revenues for 1905:

Operating.	\$58,281 30
Non-operating.	2,970 00

TOTAL.	\$61,251 30
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Revenues for 1906:

Operating.	\$59,077 43
Non-operating.	3,485 99

TOTAL.	\$62,563 42
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Revenues for 1907:

Operating.	\$65,723 66
Non-operating.	4,988 04

TOTAL.	\$70,711 70
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Revenues for 1908:

Operating.	\$62,782 37
Non-operating.	5,432 34

TOTAL.	\$68,214 71
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Revenues for 1909:

Operating.	\$68,881 18
Non-operating.	5,841 05

TOTAL.	\$74,722 23
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Revenues for 1910:

Operating.	\$71,524 98
Non-operating.	7,001 95

TOTAL.	\$78,526 93
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Revenues for 1911:

Operating.	\$78,780 65
Non-operating.	7,434 44

TOTAL.	\$86,215 09
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Revenues for 1912:

Operating.	\$80,937 56
Non-operating.	9,005 84

TOTAL.	\$89,943 40
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It further appears from this table that the revenues of 1913 were \$390.20 below the total revenues of 1912. The total revenues of 1909 show an increase of \$6,506.52 over 1908; 1910 shows an increase in total revenues over 1909 of \$3,804.70. The total revenues of 1911 show an increase over 1910 of \$7,698.16; 1912 shows an increase in gross revenues over 1911 of \$3,728.31.

The average increase in gross earnings of the water works for the five years preceding June 30, 1913, was \$4,269.50. This result is the average, taking into consideration that the records show that the gross revenues for the last year were \$390.20 less than for 1912. While the evidence disclosed no extraordinary conditions in 1913, the records of the company show a decrease in gross revenues of \$390.20, and an increase in operating expenses on two items of repair of \$3,943.03. Under these circumstances we do not believe that either the gross receipts or the operating expenses of 1913 can be taken as the measure of the income and expense of the water works.

The water works has in use 3,272 meters of the present value of \$27,158.

A just and equitable charge for water is one that is based on the cost of service. Each consumer should pay what it costs the water works to deliver to him the service he obtains.

On this basis the consumer who uses a meter ought to pay certain charges that are peculiarly meter charges. The following charges ought to be paid wholly by the consumers who have meters:

1. Interest on meter investment.....	\$2,800 00
2. Depreciation on meters.....	1,000 00
3. Resetting meters	22 98
4. Repairing meters	1,185 96
5. Reading meters	285 20
TOTAL.....	<u>\$4,794 14</u>

This sum of \$4,794.14 is peculiarly a charge against consumers that use meters. To this should be added \$1,244.44,

which is 20 per cent. of the general expenses of conducting the business. The aggregate of the expense properly chargeable wholly to the consumers who have meters is \$6,038.58. Apportioning this sum equally among the meter users shows that each should pay a special charge of \$1.84, no part of which can be properly charged to or ought to be paid by the flat rate users of the service.

There were in use at the time of the hearing 3,272 meters of the following sizes:

5/8-inch meters	2,970
3/4-inch meters	216
1-inch meters	29
1½-inch meters	22
2-inch meters	18
3-inch meters	16
4-inch meters	1
<hr/>	
TOTAL	3,272
<hr/>	

These meters vary in cost from \$8.00 for practically every type of the 5/8-inch meter to \$30.00 for the 1½-inch meter; \$55.00 for the 2-inch meter; \$85.00 for the 3-inch meter. The Trident Compound Meter appears to cost much more than the others. The 3-inch meter of this type costs \$135, and the 4-inch meter costs \$250. There are sixteen 3-inch meters and one 4-inch meter. It will be observed that 2,970 of the 3,272 meters are 5/8-inch or less in size.

It is not insisted that the sum of \$1.84 is an absolutely accurate meter charge, but it is approximately exact and sufficiently so for all practical purposes.

The payment of the revenues the company must receive ought to be apportioned equitably between the municipality and the private users of the service. This is governed by the capacity and output required by the municipality and by the private users.

Section 20 of the ordinance adopted by the city of Richmond June 16, 1884, requires the water works to establish pumping machinery sufficient to maintain eight 1-inch

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streams of water thrown to a vertical height 100 feet through 200 feet of hose, the hose to be $2\frac{1}{2}$ inches in diameter, to be attached to a hydrant situated upon the line of mains or pipes. This would require a capacity of practically 2,000 gallons per minute for fire service.

The maximum daily consumption for other than fire service is 3,500,000. This would require a capacity to furnish for other than fire service 2,430 gallons per minute.

On this basis the required capacity of the plant would be 45 per cent. for fire service and 55 per cent. for all other services.

We have found the present value of the property of the water works to be \$750,000. The capacity apportionment would be as follows:

For fire service, 45 per cent.....	\$337,500
For purposes other than fire, 55 per cent.....	412,500
	<hr/> <hr/>

That is to say, of the total capacity of the plant 45 per cent. of the present value of the property was provided to furnish capacity for municipal purposes and 55 per cent. for other than municipal purposes.

We found that the output for the year ending June 30, 1913, for fire was 1,600,000; for other than fire service the output was 952,939,000.

The output charge is represented particularly by the operating expenses of the water works except the taxes. We found that \$25,360 is a proper operating expense. On this basis the output charge should be apportioned as follows:

For fire, .0016 per cent. of \$25,360.....	\$40 50
For other than fire, 99.84 per cent. of \$25,360.....	25,319 50
	<hr/> <hr/>
	\$25,360 00

We have found that the revenues that must necessarily be paid is \$86,352 per annum. Distributing the expense as hereinabove explained we have the following results:

	<i>Fire</i>	<i>Domestic</i>
Interest.	\$20,250 00	\$21,750 00
Taxes.	4,500 00	5,500 00
Depreciation.	2,700 00	3,300 00
Operating expenses or output.	40 50	25,311 50
TOTAL.	\$27,490 50	\$58,861 50

This estimate will require the city to pay 32 per cent. of the gross revenues of the water works and the domestic consumers 68 per cent. We do not understand, however, that this 32 per cent. is exclusively for fire service. This percentage ought to represent the entire municipal expense of the city of Richmond for water.

For the year ending June 30, 1913, the superintendent of the plant testified that there was distributed in round numbers 1,000,000 gallons of free water to schools, hose houses, and public fountains of the city of Richmond and its vicinity.

Under the order that we will make, the city will be required to pay for practically all of its free water, and if the price for such free water is fixed at the lowest rate now paid for water it will increase the expenditures of the city approximately \$6,000.

Any rule that may be devised for the distribution of expense of maintaining the water works between the municipality and the private users is subject to modification by the peculiar conditions that surround it. One of the facts that ought to be considered is the previous distribution of the expense. The understanding that has existed between the community and the utility it serves is entitled to some consideration. In this particular instance the railroads contributed during the year 1913 approximately \$14,000 to the revenues of the water works. These large consumers can scarcely be called domestic users of water. They consume water for neither fire nor domestic purposes. They use it for transportation purposes; perhaps more clearly, for industrial purposes. Deducting the

amount paid by the railroads from the gross revenues that must be earned by the water works, and charging the city with 32 per cent. of the remainder, the amount the city would then be compelled to pay would not far exceed \$55.00 per hydrant and 6 cents per 1,000 gallons for water heretofore distributed as free water.

Having now arrived at the distribution of the needed revenues as between the municipality and other consumers, the next step in the matter is to determine how the revenues that shall be paid by those other than the municipality shall be apportioned between such consumers.

Here we are confronted with a very difficult task. There are practically 3,300 consumers whose service is measured by meters and practically 2,000 flat rate consumers. There is no scientific basis upon which an apportionment can be made between the flat rate users and those whose service is metered.

A scientific basis of rates would charge each consumer a minimum charge regardless of the quantity of service used, on the theory that there was a certain readiness to serve expense, that the company must pay whether the service was used or not.

In this particular case the readiness to serve charge is approximately \$4.00, which added to the meter charge as above found would make a minimum charge of about \$6.00 on every meter user and a minimum charge of \$4.00 on every flat rate user. No expert witness or any other kind of witness has informed us how it can be determined whether the flat rate user is paying anything for a readiness to serve charge or not. Under the flat rate charge the quantity of service consumed can be measured only by the maximum output of the consumer.

In any rate that may be established between such consumers, there is a certain element of conjecture that may result in injustice to either the consumer whose service is metered or the flat rate consumer or the utility.

In an effort to ascertain what would be a just and reasonable rate between the consumers who use meters and the

flat-rate users, we have spent a great deal of time and have required a very great deal of labor on the part of our accountants.

We have caused a computation to be made showing the number of gallons used by each consumer whose service is metered. After ascertaining these facts we have computed the sum paid by each consumer on the rate heretofore existing and on the rate hereinafter ordered by us. As a result of this computation we find that 198 consumers use 5,000 gallons and less per annum; 2,015 use 36,000 gallons and less per annum and more than 5,000 gallons; 455 consumers use 60,000 gallons per annum or less and more than 36,000.

We have followed this process through the entire list of the consumers of the service of the water works as such list is shown by seven consumers' ledgers kept by the water works. This has been a very long and tedious process, but it is the only method by which a result even approximating accuracy could be obtained.

The earnings from the rates hereinafter established by us are based upon the assumption that the consumers will use practically the same quantity of water for the year following the adoption of the rate that they did for the year upon which the calculation was based. If this assumption proves to be approximately correct, the rate for the metered service that we will order in addition to the other rates will produce sufficient revenues to enable the water works to earn the revenue that we have found it is necessary for it to earn.

The very magnitude of the calculations we have made in this case forbids the same process in the larger utilities. Where the number of metered services reach 10,000 or more it would be practically an endless task to arrive at a result by the method we have here used. In the smaller utilities this process is feasible and practicable, and the most certain that can be devised.

After the conclusion of the first hearing of this case we discovered that no evidence had been introduced that would enable us to establish a rate except by mere conjecture.

When this fact became evident, we directed our accountants to re-examine the records of the water works, and while so doing the accountants copied the consumers' ledgers of the water works in so far as such records showed the number of gallons used at each meter reading, and the amount collected by the water works for such reading, and from such consumer. With this data before us we began a careful investigation and discovered that the water works was collecting about \$3,000 per annum less than the schedule of rates showed it was entitled to collect. When this was ascertained, another hearing was held and the water works was asked to explain the difference between the actual receipts and the money that would have been earned under the schedule.

The discrepancy was admitted by the management of the water works and the explanation was based upon the fact that the schedule of rates filed with the Commission was not a true schedule. It was contended that certain consumers on the first day of January, 1913, were entitled to a rate of 15 cents per 1,000 gallons, and that when the schedule of rates was filed with the Commission on the sixteenth day of August, 1913, such rate was omitted from the schedule by inadvertence and oversight. It was further shown by the evidence, that in the year 1908 the water works issued a printed pamphlet purporting to give the rates of its metered consumers and, upon the first hearing of this cause, the superintendent testified that the printed pamphlet contained a true statement of the rates now in force, and that the schedule filed with the Commission was a correct schedule of the rates in force January 1, 1913. The printed pamphlet did not contain the rate that it is now insisted was in force, and was by accident omitted from the schedule filed with the Commission. More than 500 consumers of the water works were given the benefit of this omitted rate from the first day of May, 1913, to the present time.

On the second hearing of the case it was established by the evidence, and admitted by the superintendent, that the

Chesapeake and Ohio Railroad Company had been charged for water a rate lower than it ought to have been charged according to the schedule filed with the Commission, and according to the rates in the printed pamphlet. This was explained by the superintendent on the theory that at some prior time a contract had been entered into with this railroad or its predecessor entitling the Railroad company to water at the rate actually charged.

The high character of the superintendent for honesty and truthfulness perhaps entitles him to the benefit of the doubt as to whether his acts were due to intentional violation of the law or otherwise. It is difficult for us to believe that the intelligent management of this company who used this omitted rate almost daily would, when they filed this schedule, have omitted it therefrom. The filing of the schedule of rates with this Commission was one of the most important acts the management of this company has had to perform. Under the contention of its officers this act was done as if it were a matter of no significance. A rate vitally affecting the revenues of the company, and vitally affecting one-tenth of its consumers did not appear in the printed schedule of rates in 1908, nor in the schedule of rates filed pursuant to the Public Service Commission Law. The requirement that all rates are to be filed with the Commission is mandatory and is enforceable by fines and penalties.

If the explanation now given is true, the filing of the schedule of rates was done without a proper regard to the importance of the requirement of this statute. While the rate claimed to have been omitted produced less revenue than the schedule of rates filed, that is no excuse. Less revenue is the very thing that the water works wanted on the trial of this case. It insists in its brief that it must have an increase in revenues and an increase in rates. But in the entire proceeding until the discrepancy was discovered by us it was earnestly insisting that the schedule of rates filed with the Commission were the true and correct rates of this company.

After carefully considering all of the evidence pertinent to the subject of rates, regulations and practices, we find each one separately of the following facts to be established.

1. That each one of the meter rates in use at this date by the Richmond City Water Works is unjustly discriminatory.

2. That Rule No. 2 of the Richmond City Water Works requires each consumer to pay a fee of not less than \$10.00 at the time of his application to have a main tapped, and that this is a regulation that is unjust and unreasonable.

3. That Rule No. 29 requires each meter user to pay a monthly meter rental of not less than 25 cents, and that this is an unjust and unreasonable charge.

4. That the rate charged the Chesapeake and Ohio Railroad Company is preferential and unjustly discriminatory.

5. That large quantities of water, to wit, 100,000,000 gallons of water annually has heretofore been given away without any compensation, and that this is an unreasonable and an unjust practice.

After having found these facts upon the investigation, we have made it become the duty of the Commission to determine, and by order fix, just and reasonable rates, tolls and charges and schedules which are to be imposed, observed and followed in the future in lieu of those found to be unjust, unreasonable, unjustly discriminatory or preferential, and to determine and declare and by order fix just and reasonable practices and regulations to be followed in the future in lieu of those found to be unjust and unreasonable.

It is, therefore, ordered by the Public Service Commission of Indiana, That the following schedule of rates, tolls, charges and the following rules, regulations and practices be imposed, observed and followed in the future by the Richmond City Water Works, to wit:

SCHEDULE OF RATES FOR CONSUMERS USING METERS.

For each meter installed there shall be paid by the consumer an annual charge of \$2.00. This charge shall be paid in four equal installments of 50 cents each.

For the first 3,000 gallons used per month, there shall be paid 20 cents for each 1,000 gallons consumed.

For the next 7,000 gallons used per month, there shall be paid 15 cents for each 1,000 gallons consumed.

For the next 80,000 gallons used per month, there shall be paid 12½ cents for each 1,000 gallons consumed.

For the next 910,000 gallons used per month, there shall be paid 8 cents for each 1,000 gallons consumed.

For the next 1,000,000 gallons used per month, there shall be paid 7 cents for each 1,000 gallons consumed.

For the next 2,500,000 gallons used per month, there shall be paid 6 cents for each 1,000 gallons consumed.

For all in excess of 2,500,000 gallons used per month, there shall be paid 5¾ cents for each 1,000 gallons.

Each meter shall be read each month. All accounts shall be paid July first, October first, January first, and April first, of each year.

For each fire hydrant located and maintained upon a public street or other public thoroughfare, and heretofore or hereafter set by order of the proper authorities of the city of Richmond, said city shall pay \$55.00 per annum, payable in four equal installments, at the times hereinabove fixed for the payment of meter charges.

For each one of the following fire hydrants there shall be paid the sum of \$55.00 per annum, to wit: Three hydrants in Spring Grove; two hydrants at Reid Memorial Hospital; one hydrant in Beallview, all outside of the city limits.

For the fire hydrants at Earlham College, and at Wernle Orphans' Home, there shall be paid \$30.00 per annum.

All hydrant rentals shall be payable quarterly, at the dates when meter charges are paid.

Elevators, 10 cents per 1,000 gallons.

County Court House and Jails, 10 cents per 1,000 gallons unless meter schedule applies.

City of Richmond, other than as above provided for hydrants, 10 cents per 1,000 gallons.

Ice manufactories, months of June, July, August and September, on an average daily consumption of 50,000 gallons for any one month at a rate of 6 cents per 1,000 gallons.

All public and parochial, or private schools, and churches, 6 cents per 1,000 gallons used in any one month, payable quarterly as aforesaid.

All flat rates, and all other rates, not herein specifically mentioned, now

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on file with the Public Service Commission of Indiana, shall be and remain the lawful rates, and shall be payable quarterly in advance.

No charge shall be made for tapping the mains, and the company shall install at its own expense all services from the main to inside the curb, not exceeding 100 feet each, and install curb box and curb cock.

No extensions of mains shall be ordered less than 200 feet in length. No mains shall be required to be laid where the annual income therefrom for fire and all other purposes, at the rates fixed in this schedule, does not equal 10 cents for each foot of extension ordered.

No service shall be changed from metered to flat rate.

The city shall not pay any rental for hydrants set or maintained outside the city limits.

It is further ordered by the Public Service Commission of Indiana, That said Richmond City Water Works cease and desist from enforcing its said Rule No. 2, and its said Rule No. 29, and each one of said rules are hereby cancelled and annulled.

It is further ordered by said Commission, That all the rules and regulations of the Richmond City Water Works, except those hereinabove cancelled and annulled, be and remain in full force and effect, and shall be the lawful rules and regulations for said water works. Provided, That said Richmond City Water Works shall cause said rules to be printed and numbered consecutively and shall file a copy with the Board of Public Works of said city of Richmond and a copy thereof with said Public Service Commission of Indiana.

It is further ordered by said Commission, That the rates and rules and regulations in this order hereinabove established, or that heretofore existed, and by said order are continued in force and effect, shall become effective on the thirtieth day of June, 1914, and said water works is ordered to file its schedule of rates, tolls and charges and its printed rules and regulations, all as above set forth, with this Commission prior to said thirtieth day of June, 1914.

It is further ordered by said Commission, That said Richmond City Water Works shall cease to give to said Chesapeake and Ohio Railroad Company any preferential or unjustly discriminatory rates.

Under the findings herein made it becomes the duty of this Commission to ascertain and declare, and by order fix the expenses incurred by the Commission upon its investigation, and direct the Richmond City Water Works within 20 days to pay to the State Treasurer such expenses so incurred.

It is further ordered by the Public Service Commission of Indiana, That within 20 days from the date when a certified copy of this order is delivered to an officer or agent of the Richmond City Water Works, said water works shall pay to the State Treasurer of the State of Indiana the following sums of money for the expenses incurred by this Commission in this cause, to wit:

The following expenses have been incurred by the Commission in an examination and audit of the Richmond City Water Works, to wit:

1. JOHN L. FULLING.

Railroad Fare:

May 4th, railroad fare Indianapolis to Richmond....	\$1 35
May 6th, railroad fare Richmond to Indianapolis....	1 35
May 13th, railroad fare Indianapolis to Richmond and return.	2 70

Board and Lodging:

May 4th, 5th and 6th, board and lodging.....	4 40
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Salary:

Salary, \$5.50 per day, for 4 days.....	22 20
	<hr/> \$32 00

2. CHARLES J. STEWART.

Railroad Fare:

May 4th, railroad fare Indianapolis to Richmond....	\$1 35
May 6th, railroad fare Richmond to Indianapolis....	1 35
May 13th, railroad fare Indianapolis to Richmond and return.	2 70

Board and Lodging:

May 4th, 5th and 6th, board and lodging.....	4 60
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Stenographic Work:

May 6th, 130-page report, at 5 cents per page.....	6 50
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Salary:

Salary, \$5.50 per day, 4 days.....	22 20
	<hr/> \$38 70

3. E. H. REED.

Railroad Fare:

February 15th, railroad fare Indianapolis to Richmond.	\$1 35
February 21st, railroad fare Richmond to Indianapolis.	1 35
February 24th, railroad fare Indianapolis to Richmond and return	2 70

Board and Lodging:

February 16th to 24th, inclusive, board and lodging..	12 40
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Postage:

Mailing report	20
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Salary:

Salary, 9 days, at \$4.16 per day.....	37 45
	<hr/> \$55 45

4. J. A. WOLF.

Railroad Fare:

February 15th, railroad fare Indianapolis to Richmond.	\$1 35
February 21st, railroad fare Richmond to Indianapolis.	1 35
February 24th, railroad fare Indianapolis to Richmond and return	2 70

Board and Lodging:

February 15th to 24th, inclusive, board and lodging..	12 60
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Miscellaneous Expense:

February 19th, paper.....	45
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Salary:

Salary, 9 days, at \$4.16 per day.....	37 45
	<hr/> \$55 90

5. J. A. WOLF.

Railroad Fare:

September 24th, railroad fare Indianapolis to Richmond	\$1 35
September 27th, railroad fare Richmond to Indianapolis.....	1 35
September 29th, railroad fare Indianapolis to Richmond	1 35
October 4th, railroad fare Richmond to Indianapolis.	1 35
October 6th, railroad fare Indianapolis to Richmond.	1 35
October 11th, railroad fare Richmond to Indianapolis.	1 35
October 13th, railroad fare Indianapolis to Richmond.	1 35
October 15th, railroad fare Richmond to Indianapolis.	1 35

Board and Lodging:

September 24th to October 15th, inclusive, board and
lodging. \$39 00

Salary:

Salary, 19 days, at \$4.16 per day. 79 05
————— \$128 55

6. O. C. HERDRICH.

Railroad Fare:

September 24th, railroad fare Indianapolis to Rich-
mond. \$1 35
September 27th, railroad fare Richmond to Lebanon
and return 3 70
October 4th, railroad fare Richmond to Lebanon
and return 3 70
October 11th, railroad fare Richmond to Indianapolis
and return 2 70
October 15th, railroad fare Richmond to Indianapolis. 1 35

Board and Lodging:

September 24th to October 24th, inclusive, board and
lodging. 26 45

Miscellaneous Expense:

September —, paper. 25

Salary:

Salary, 19 days, at \$5.00 per day. 95 00
————— \$134 50

The following expenses have been incurred by the Com-
mission in the valuation of the property of the Richmond
City Water Works, to wit:

Railroad Fare:

Seven men, Indianapolis to Richmond and return,
at \$2.70 \$18 90

Board and Lodging:

November 16 to November 22, 1913, 6 men for 6 days,
at \$1.50, and one man for one day. 55 50

Salaries:

November 16 to December 13, 1913 —
Garman, H. O., 23 days, at \$10.00. 230 00
Worsham, A. H., 23 days, at \$5.00. 115 00

Salaries — Continued.

November 16 to December 13, 1913 — continued.

Taylor, G. B., 23 days, at \$5.00.....	\$115 00
Deery, J. A., 23 days, at \$3.00.....	69 00
Walling, C. E., 23 days, at \$4.00.....	92 00
Trook, M. T., 23 days, at \$2.50.....	57 50
Kreutzinger, H. J., 18 days, at \$2.50.....	45 00

Livery:

One carriage 2 days, at \$2.00.....	4 00
One carriage, 1/2 day, at \$1.50.....	1 50
	————— \$803 40

Miscellaneous Expense:

89 pages of blue print, 3 copies, at 2 cents per page..	5 34
	————— 5 34

TOTAL. \$1,254 14

The Public Service Commission of Indiana has ascertained, and does now declare and by order fix the expenses incurred by it upon the investigation in the above entitled cause at \$1,254.14, and directs such utility to pay to the State Treasurer such expenses so incurred as hereinbefore ordered.

MASSACHUSETTS.

Board of Gas and Electric Light Commissioners.

EAST BOSTON PETITION.

Dated July 17, 1914.

**Reduction of Rates—Reasonableness of Return—Combined Profits from
All Sources to be Considered in Determining Fair Return to
Stockholders of Inter-related Companies
Under Common Ownership.**

Upon complaint asking that the rate for gas in East Boston be reduced from 85 to 80 cents, the price prevailing in all other portions of Boston except Hyde Park, it appeared that the East Boston Gas Company was supplying gas in this district, and that of the gas so supplied the East Boston company made between one-third and one-half in its own plant and bought the remainder from the Boston Consolidated Gas Company.

It further appeared that both the East Boston Gas Company and the Boston Consolidated Gas Company, as well as the New England Gas and Coke Company, from which the Consolidated company purchased its gas, were owned by trustees known as the Massachusetts Gas Companies; and that the profits of all these companies and of other allied companies were pooled to meet the interest and dividend requirements of the association.

Held: That in determining the reasonableness of the return which the owners of the stock of the East Boston Gas Company received, the Board should consider the combined profits received by the owners from all transactions by or with the company;

That profits reached the owners of the stock not only directly through the dividends paid, but hardly less directly from the sale of gas by the Consolidated to the East Boston company.

The Commission found that a rate of 80 cents per thousand cubic foot would afford the East Boston company a fair return upon the value of the property which is actively and necessarily employed for the public convenience.

Accordingly a recommendation was made that the rate be reduced from 85 to 80 cents per thousand cubic foot.*

* Editor's headnote.

OPINION AND RECOMMENDATION.

This is a complaint in writing, under Section 34 of Chapter 121 of the Revised Laws, by more than twenty customers of the East Boston Gas Company, of the price of gas sold and delivered by said company.

A public hearing on this complaint was given at the office of the Board, at which the company and its customers were represented.

The territory supplied by this company is a compact and densely populated section, composed of the island district of the city of Boston, known as East Boston, and the city of Chelsea, which are separated by the narrow tidal stream known as Chelsea River. Prior to January 1, 1910, Chelsea was supplied by the Chelsea Gas Light Company, the two companies being consolidated on that date in accordance with the provisions of Chapter 529 of the Acts of 1908. Before the union of the two companies, under three successive complaints against the Chelsea company and four against the East Boston, the price of gas, as changed conditions appeared, was gradually reduced until in 1909 the maximum net price in Chelsea was 95 cents and in East Boston \$1.00. Immediately upon the consolidation the price in the entire territory of the united company was reduced to 90 cents. On May 1, 1911, the present price of 85 cents was established. At the hearing the petitioners asked that it might be further reduced to 80 cents, the price prevailing in all other portions of the city of Boston, except Hyde Park.

Since the consolidation the company's annual sales have increased more than 50 per cent., its total output for the year ending June 30, 1914, being 463,000,000 cubic feet. It supplies a population estimated at about 90,000. The gas as sold is a mixed gas made by well-known coal, water and coke oven processes, ranging from 16 to 18 candle-power, the legal requirement being 16 candles. The company makes in its own works about a third to a half of its gas and buys the remainder from the Boston Consolidated Gas Company.

To enable the East Boston company to make all its gas in its own works would require a substantial addition to its plant, and as such addition should take account of the company's future and would properly be contrived to more than meet present requirements, the resulting conditions would be reasonably certain, for a time at least, to increase the cost of gas, not merely from an investment charge disproportionate to immediate needs, but by some reduction in efficiency of operation. Under the peculiar conditions which surround this company, such an addition to its works seems neither necessary nor advisable for either the public or private interests involved. All interests will be best served by the continuance of the purchase of gas, so long as it can be done at a reasonable price. The company's own works appear to be economically operated, and indeed the amount annually made there is probably as much as it can make and run those works at their highest efficiency. Due in a measure to these facts, the gas made by the company in the last fiscal year cost approximately 35 cents a thousand. For that bought from the Boston company it paid 50 cents. As these figures indicate only the cost in the holder, a fair selling price must cover, in addition, the cost of maintenance, distribution and sale (including taxes), interest and dividend charges. The actual expenditure for these items in the fiscal year just closed was 41 cents.

Somewhat more than 98 per cent. of the stock of the East Boston company is owned by the trustees of the unincorporated voluntary association known as the Massachusetts Gas Companies, which also has an even more complete ownership of the stock of the Boston Consolidated Gas Company; the latter supplies all the remaining portions of the city of Boston, excepting those commonly known as Charlestown and Hyde Park. This association also owns or controls the New England Gas and Coke Company, from which the Boston company buys substantially all its coal gas. The same persons virtually control and manage all of these companies. The profits of all these,

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as well as other allied companies, however derived, are pooled to meet the interest and dividend requirements of the association. These relations naturally direct attention to the reasonableness of the price for the gas bought and to the reasonableness of the dividends paid.

Any attempt to reach a correct basis for a trade, when both parties to the transaction are virtually identical, must always be attended with serious difficulties. Theoretical refinements are likely to modify or obscure those motives which actual conditions would be likely to induce in absolutely independent trading, entirely free from any community of interest. Some facts are thus given too great and others too little weight. Even outside parties may find it difficult to measure reliably the proper effect of all the theoretical factors which are assumed to be entitled to consideration when viewing the interests and legal relations of the parties, and to give to each and all of them the same force which parties might give who were strangers to each other or whose business judgment was entirely free. Particularly is this true where, as in this instance, the seller is itself a purchaser under like conditions. If the question of the reasonableness of the price of the gas bought be viewed as one merely concerning the immediate parties to the trade, it might be difficult to say conclusively whether the ability of the buyer to provide for himself or of the seller to sell should be most influential. It is not unlikely that in this case the former may have been the more important factor. While the price may be less than the figure at which the East Boston company could supply itself, it is by no means certain that a lower price would be unprofitable to the Boston company, notwithstanding the possibility of a higher profit from some other possible customer.

The questions involved, however, are distinctly broader than these suggestions would imply. Both the Boston and the East Boston companies are engaged in a public service and are affected with a public interest which each is bound to consider. Because of this the reasonableness of the

entire return or profit which is received by the owners of the East Boston company's stock from all the transactions by or with that company becomes important. The profits from these relations reach the owners of this stock not only directly through the dividends paid, but hardly less directly, though perhaps less obviously, from the sale of gas by the Boston to the East Boston company. It is, therefore, unnecessary for the purposes of this case to determine separately and conclusively the reasonableness of the price charged in any single transaction between the two companies or of the dividends received directly from the profits on the business of the company as a whole. It is the combined profit from all sources taken together which will determine the reasonableness of the return which the owners of the East Boston company receive.

It was urged by the petitioners that the value of the service in East Boston is no greater than in other sections of the same city where a lower price is now charged. Indeed, the characteristics of the population and the business of this district, as compared with those in certain other districts of the city, are so similar as to raise a question whether the difference in price may not be in effect discriminating against the East Boston section. Much emphasis was placed upon this proposition at the hearing.

The recent annual dividends of the company have been undoubtedly ample, not to say liberal, to the stockholders. If, however, the margin of apparent profits remaining in recent years, after the dividend payment, be considered, it will be found to be much less than successful companies have thought advisable for the continued success of their business. Whatever difference of opinion may exist as to the use of its profits or as to the amount which should be reserved out of profits for depreciation, the company is entitled to charge such rates as, with proper management, may afford a reasonable return upon the investment. The real profits are not always to be measured by the difference between operating expenses and income, with a fair allowance for depreciation or replacement, for not only these

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profits which accrue directly to the shareholders, but those which come to them by indirection, must be considered in determining whether, under all their relations with the corporation, they are in receipt of a fair return.

As already indicated, the Board has had occasion in an unusual degree to familiarize itself with the property and affairs of this company, but it has seemed unnecessary to discuss at this time some of the features commonly considered in rate cases and which have influenced the Board's conclusion. It is perhaps sufficient to say that, in the opinion of the Board, upon all the facts in its possession and in harmony with the principles stated, the price hereinafter named will allow, above all necessary cost of conducting the company's affairs, a fair return upon the value of the property which it is actively and necessarily employing for the public convenience.

The Board recommends that, in all bills rendered on and after the first day of August next, the net price charged by the East Boston Gas Company for the gas sold and delivered by it shall not exceed 80 cents a thousand cubic feet.

NEW HAMPSHIRE.

Public Service Commission.

MANCHESTER TRACTION, LIGHT AND POWER COMPANY. PETITION FOR AUTHORITY TO PURCHASE STOCK OF THE NASHUA LIGHT, HEAT AND POWER COMPANY, AND TO ISSUE ADDITIONAL SHARES OF STOCK FOR CERTAIN PURPOSES.

No. D—179.

Decided June 23, 1914.

Purchase of Stock of Company Engaged in Similar Business in Neighboring City — Valuation of Property of Vendor Company — Going Value as an Independent Element not Separately Appraised.

Upon petition by the Manchester Traction, Light and Power Company for authority to purchase the stock of the Nashua Light, Heat and Power Company, paying for each share so purchased one share of its own stock and \$40.00 in cash, and to increase its capital stock by the issuance of 6,000 shares or such part as might be necessary to take up, share for share, the stock of the Nashua company offered in exchange, and by the issuance of 2,800 shares to be offered to the Manchester company's stockholders proportionately at par, the proceeds to be used in making the cash payment required by the agreement for the purchase of the stock of the Nashua company, in paying for extensions necessary to connect the properties of the two companies, the remainder, if any, to be applied in payment of the funded debt of the Manchester company heretofore incurred in making permanent improvements, the Commission made a valuation of the property of the Nashua company following the principles set forth in the *Berlin Electric Light Company's* case* and in the *People's Gas Light Company* case.†

For the reasons stated in the *People's Gas Light* case no allowance was made for going concern value as an independent element to be separately appraised.

Issuance of Stock at Par Approved.

Held: That although the stock of the petitioner was selling at 140, the Commission would approve the issuance of additional stock at par because the practice of issuing stock at various prices creates inequalities

* Printed in Commission Leaflet No. 21, at page 781.— Ed.

† Printed in Commission Leaflet No. 32, at page 608.— Ed.

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among the various classes of stockholders and also because the consuming and investing public has the right to know that every dollar of stock represents a dollar of investment, precisely that and nothing more.

Finding by Commission as to Value of Vendor Company.

Considering the par value only of the stock to be given in exchange for that of the Nashua company and to be issued to raise the funds for the cash payment provided for by the contract of sale, the price to be paid for the entire capital stock of the Nashua company was \$840,000.

Held: That the fair present value of the Nashua company does not equal \$840,000.

That if the petition presented merely the case of a transfer of the Nashua company to another ownership to be managed as a separate operating unit, the Commission would deny the petition.

Proposed Transfer Must Be for "Public Good"—Purchase Approved.

Held: That although the statute provides that one public utility cannot acquire the stocks or bonds of another "unless authorized to do so by order of the Commission," no test is suggested by the statute to determine whether or not the requested authorization should be granted. However, as the effect of control by stock ownership is substantially equivalent to that of control by a sale outright of the property and franchises of the controlled corporation, and as the prohibition of one is necessarily based upon the same considerations as the prohibitions of the other, the Commission may take as a guide the statute relating to the transfer by one utility to another of all its property and franchises. The test provided in the latter statute is that it must appear that the proposed transfer, lease or contract will be "for the public good and not otherwise."

That as the purchase of the Nashua company by the Manchester company and the proposed joint operation of the two plants would tend to economy of operation and improvement in service in both communities, and would consequently be "for the public good," the Commission approved the purchase of the Nashua company by the Manchester company on the terms stated in the contract.*

APPEARANCES:

Edwin F. Jones and Frank S. Streeter for the petitioner.

REPORT.

NILES, Commissioner:

The Manchester Traction, Light and Power Company by this petition asks authority to purchase all or not less than

* Editor's headnote.

5,400 of the 6,000 shares of the capital stock of the Nashua Light, Heat and Power Company, paying for each share so purchased one share of its own stock and \$40.00 in cash, and to increase its capital stock by the issuance of 6,000 shares, or such part thereof as may be necessary to take up share for share the stock of the Nashua company offered in exchange, and by the issuance of 2,800 additional shares to be offered to its stockholders proportionately at par, the proceeds to be used in making the cash payments required in the purchase of the stock of the Nashua company, and in paying for extensions necessary in order to connect the properties of the two companies, and the remainder, if any, to be applied in payment of the funded debt of the Manchester company heretofore incurred in making permanent improvements and extensions of its plant.

The Nashua company does both a gas and an electric business, having a complete monopoly of these businesses in the city of Nashua. It was organized in 1887 with a capital of \$45,000, which has been gradually increased until there are now outstanding 6,000 shares of its capital stock of the par value of \$600,000, and of the market value of approximately \$960,000, that being the amount at which it is assessed for purposes of taxation. One hundred thousand dollars of new stock issued in 1906 was taken by the stockholders at \$152 a share, making the total amount invested through stock subscriptions \$652,000. There are also outstanding notes to the amount of \$62,000, representing indebtedness incurred in making extensions and additions to the plant. The construction account amounts to \$406,642.86 for the gas department, and \$454,938.63 for the electric, making a total of \$861,581.49 for both departments. The figures for construction since 1890 are claimed to be accurate. But the charge to that account in 1890 of \$223,474.65 is admitted to be an arbitrary figure,—whether greater or less than the true amount can be judged only from the estimates submitted of cost of reconstruction new. In addition to the items covered by the construction account, there are stores and supplies of the value of \$38,474,

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making the total cost of depreciable property, according to the books, \$900,055.49. In addition there is land, the present fair market value of which is claimed to be \$90,000, but which cost only a small fraction of that amount.

The property of the Nashua company, exclusive of land, was valued on the basis of cost of reproduction new and less depreciation on behalf of the Commission by Sloan, Huddle, Feustel and Freeman of Madison, Wisconsin, Mr. Feustel appearing personally as a witness, and on behalf of the petitioner by Hollis French of Boston. The results of their valuations are shown by the following table:

	Feustel		French	
	New	Less depreciation	New	Less depreciation
Total physical value of operating property.....	\$635,339	\$514,178	\$640,543	\$514,054
Overhead.....	95,295	77,125	134,514	134,514
	<u>\$730,634</u>	<u>\$591,303</u>	<u>\$775,057</u>	<u>\$648,568</u>
Stores and supplies.....	38,474	38,474	38,700	38,700
Non-operating buildings.....	18,400	12,926	24,100	15,000
	<u>\$787,508</u>	<u>\$642,603*</u>	<u>\$835,857</u>	<u>\$700,268</u>
Additional land.....	90,000	90,000	90,000	90,000
	<u>\$877,508</u>	<u>\$732,603</u>	<u>\$925,857</u>	<u>\$790,268</u>

Mr. French also added an allowance of \$19,652 for overhead charges on the land, estimated on an amount slightly in excess of the sum of \$90,000 found to be its fair value, making his total valuation, with land included, \$945,509.

It will be noted that the valuations of the physical properties now vary by only about \$5,000, Mr. French's being the larger, while Mr. Feustel's depreciated value exceeds Mr. French's by \$124. The great variation comes in the treatment of the overhead charges, Mr. Feustel allowing 15 per cent., while Mr. French testifies that in his opinion 21 per cent. is a reasonable allowance. Mr. Feustel also depreciates his overhead charges, while Mr. French does not. On the matter of the amount of overhead charges to be allowed, we are, upon all the evidence, inclined to regard as ample the allowance made by Mr. Feustel. And as stated in the *Berlin Electric Light Company* case,† decided

*An error of \$100 is apparent.—Ed.

† Printed in Commission Leaflet No. 21, at page 781.—Ed.

August 30, 1913, we are clearly of the opinion that the overhead charges, being theoretically a part of the actual cost of construction which would have to be met if the plant were reduplicated, should be depreciated in like manner as the physical properties in connection with whose construction they are incurred.

— A claim is made of a large going concern value, but, for the reasons stated in our recent report on the *People's Gas Light Company* case,* decided June 10, 1914, we find in the facts of this case no basis for the allowance of such an independent element of value, to be separately appraised. The company has from its very inception paid good dividends, 6 per cent. up to 1899, and 8 per cent. since that year, with extra dividends of 25 per cent. in 1891 and 20 per cent. in 1899.

In four years, beginning with 1910, it has set aside a "depreciation and renewal reserve account," amounting to \$121,294.06, of which \$103,253.50 has been invested in extensions, and the remainder charged off to renewals of specific units of property. And a comparison of the actual investment by the stockholders with the amount shown by the construction account and by the valuation of the engineers shows clearly that a further substantial sum has been invested in the plant out of earnings, after paying ample dividends, which can only be regarded as an additional depreciation reserve.

Mr. Feustel testified that the amount of the depreciation would fairly represent the cost of developing the business, or going concern value, if there had been no exorbitant dividends and no reserve for depreciation. That seems an almost self-evident proposition. A plant should normally earn enough to pay fair dividends and to make good its depreciation. If no provision can be made for depreciation out of earnings for a considerable period, the amount represented by the depreciation is something to which the company is entitled but which it has foregone, and fairly

* Printed in Commission Leaflet No. 32, at page 608.—Ed.

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represents the cost of developing the business. But when the company has paid ample, and, judged by the standard of a fair return, excessive dividends, and has more than made good its depreciation out of earnings, as in the present case, there has been no cost of developing the business at the expense of the stockholders. It has paid for its own development. The situation is similar to that in the *People's Gas Light Company case*,* and, for the reasons stated in our report in that case, we see no occasion for attempting to make here a separate assessment of going concern value. Various theoretical bases of estimating going concern value are suggested, but none of them seems to us deserving of serious consideration. The truth regarding all such methods was stated with great frankness by Mr. French, in connection with his testimony regarding one particular method on which he had submitted some figures (Record, p. 98).

"Q. Suppose I should ask you as an engineer to figure the value of that company down there, would you yourself adopt this method of figuring the going concern value?"

"A. There are about as many ideas of going concern as there are engineers, and I personally do not care about the method. You can get any result you want."

Mr. French again defined going concern value as the amount necessary to take care of the depreciation accruing during the time required to bring the plant up to the point where it should pay a fair return on the investment. As this plant has always paid a fair return, and has also earned enough to enable its owners to put back into the property a sum in excess of the total depreciation, it is obvious that on Mr. French's definition, as on Mr. Feustel's, there is no room for any going concern value, considered as an item to be appraised separately. Of course, what is being valued is a plant with business attached, in full and profitable operation, and our valuation is made with that fact clearly in mind. But that is a very different matter

* Printed in Commission Leaflet No. 32, at page 608.—Ed.

from valuing everything in sight, and then adding perhaps 25 per cent. for an imaginary going concern value, based not on evidence, but on some theoretical method which can be so handled as to produce any desired result.

Considered as an element in the cost of reproduction, Mr. French's testimony also quite effectually disposes of the item of going concern value (Record, pp. 101-2).

"Q. I suppose it is purely theoretical; in other words, if you obliterated to-day the existing plant in Nashua and immediately established another plant without any connections at all, practically all the people would want a connection with the system, would they not? A. Yes, if they had been taking it previously, they would.

"Q. The same is true of the electric users, is it not? A. True.

"Q. So if you immediately substituted for this existing plant another plant without connections you would get all your business? A. Just the way it was.

"Q. Immediately? A. Under those circumstances, you would not be allowed any more capital than that plant cost.

"Q. Under those circumstances, starting with a new plant, you would immediately get business enough to pay a return on the plant? A. I think that is very well put.

"Q. (By Mr. Jones) It would take some time to make connections; they couldn't do it in a minute? A. I think that is in Mr. Benton's assumption."

It is quite clear from this discussion that whatever consideration should be given to going concern value in determining the actual investment in a public utility property, it has no place whatever in cases such as this, in an estimate of the present cost of reproduction. Nor are we impressed by the claim of an allowance for working capital. Whatever the company has of value will be taken into account. What it has not, though it ought to have it, is of no consequence in fixing its valuation for purposes of sale,—if indeed it is for any purpose. Inquiry since the hearing has developed the fact that the company had on hand, at approximately the date of filing the petition, cash and bills receivable in excess of bills payable amounting to \$21,804.22, which of course must be taken into account in determining the value of its assets.

The petitioner asks to be permitted to purchase the 6,000 shares of the capital stock of the Nashua company, giving in exchange therefor 6,000 shares of its own stock and \$40.00 in cash for each share purchased, or \$240,000 if the entire issue is obtained, the necessary cash to be obtained by an issue of stock to be allotted to its shareholders proportionately at par. The stock of the petitioner is now selling at \$140. But we have no hesitation in authorizing the new issue at par. The practice of issuing stock at various prices, according to temporary fluctuations in the stock market, has the effect of creating inequalities between the various classes of stockholders, produces injustice and confusion, makes more difficult the securing of new money needed for extensions and improvements, and is not required by any consideration of public interest. The consuming and investing public have the right to know that every dollar of stock represents a dollar of investment,—precisely that, and nothing more. We have in no case required that stock be issued above its par value, and while contingencies might perhaps arise making such a course seem reasonable, we can at present think of no circumstances which would cause us to require it.

Considering therefore the par value only of the stock of the Manchester company to be given in exchange for that of the Nashua company, and to be issued to raise the funds for the cash payment provided for by the contract, the price to be paid for the entire capital stock of the Nashua company is \$840,000.

We cannot find that the fair present value of all the property of the Nashua company equals the sum of \$840,000, and if the petition presented simply the case of a transfer of the Nashua company to another ownership, to be managed, as heretofore, as a separate operating unit, we would be constrained to deny the petition.

But this case does not turn solely upon the value of the Nashua plant viewed as a distinct property.

The statute (Laws of 1911, Chapter 164, Section 13 (c)) forbids the acquisition by a public utility of the stock or

bonds of a like utility " unless authorized to do so by order of the Commission." No test is suggested by which the Commission shall determine whether the requested authorization should be granted. As, however, the effect of control by stock ownership is substantially equivalent to that of control by a sale outright of the property and franchises of the controlled corporation, and the prohibition of the one is necessarily based upon the same considerations as the prohibition of the other, we can find in the statute relating to the transfer by one utility to another of all its property and franchises the test by which to determine whether such authorization as is here requested should be given. That statute (Laws of 1913, Chapter 145, Section 13 (b)) provides that such transfer shall be made only by order of the Commission, and that " The Commission shall make such order in any case where it shall appear that the proposed transfer, lease or contract would be for the public good and not otherwise."

The authorization of the stock transfer here proposed must therefore depend upon whether it is found to be " for the public good." It is clear that a purchase at a grossly excessive price, inevitably resulting in an undue burden upon the public in increased rates or impaired service and facilities, would not be for the public good. But it is also clear that where the discrepancy between the value and the price to be paid is not large, there may be benefits to the public from proposed changes in methods of operation sufficient to make up for the deficiency in value.

The Nashua company produces its power entirely by steam, having for that purpose an exceptionally well planned and efficient plant. The Manchester company has large developed water powers on the Merrimack and Piscataquog Rivers upon which it relies entirely except in times of extreme low water, and from which it has in times of ordinary flow a large surplus of power for which at present there is no demand. It has also an auxiliary steam plant, and a large undeveloped water power at Hooksett, on the Merrimack River. It is proposed to connect the Manchester

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and Nashua systems and to sell the surplus water power of the Manchester company to the Nashua company at reasonable rates, and before long to develop the Hooksett power also. When that is done it is probable that the entire needs of both communities can be met for many years to come, except in cases of accident or abnormal water conditions, by electricity developed from the Manchester company's water powers. And in cases of temporary failure of any of the water powers both steam plants will be available to supply electricity to either city. Not only will this arrangement tend to make the service steady and reliable at all times in both cities, but it will furnish a market for the surplus power of the Manchester company, will probably enable that company to make a profitable development of its Hooksett power, the investment in which is now lying idle, and it is estimated will effect an annual saving to the Nashua company of about \$20,000 in operating expenses through the less cost of electricity developed from water power as compared with that produced by steam. The Manchester company also agrees to put in force in Nashua the same schedule of rates for lighting as is now in force in Manchester, which it is estimated will produce an average reduction of 18 per cent. in the cost of electric lighting in Nashua, and will make no increase in the existing Nashua power rates, which are on a generally lower basis than those in force in Manchester.

Taking all these facts into consideration, we find that the Manchester company can well afford to pay the price agreed upon for the stock of the Nashua company, that the joint operation of the two plants in the manner proposed will tend to economy of operation and improvement of service in both communities, that the purchase of the stock of the Nashua company by the Manchester company upon the terms stated in the contract will be for the public good, and that the proposed issue of 8,407 additional shares of the capital stock of the Manchester company is reasonably requisite for the purposes for which it is desired.

This finding, being based largely upon the peculiar circumstances of the case, is not to be taken as a finding of value which will be considered in any subsequent proceeding involving the reasonableness of the rates of either company.

The Manchester company has at present arranged for the purchase of only 5,607 shares of the Nashua company's stock. It will be authorized to issue a like number of shares of its own stock to be exchanged share for share for the stock of the Nashua company. It will also be authorized to issue 2,800 additional shares of its stock, to be offered to its shareholders proportionately at par, the proceeds to be used to make the cash payments of \$40.00 a share for the Nashua company's stock, and to defray the cost of making the necessary extensions required to connect the plants of the two companies, estimated at about \$60,000, and the remainder, if any, to be applied in the payment of floating indebtedness incurred in extensions and permanent improvements of its plant heretofore made.

If additional purchases of the stock of the Nashua company are made, the Manchester company will be authorized by supplementary order to issue such additional shares of stock as may be requisite in order to make payment therefor upon the same basis.

An order will issue accordingly.

Filed June 23, 1914.

BENTON and WORTHEN, *Commissioners*, concurred.

ORDER No. 322.

Upon the foregoing report, which is made a part hereof,

It is ordered, That the Manchester Traction, Light and Power Company be, and hereby is, authorized to purchase all or not less than 5,607 of the shares of the capital stock of the Nashua Light, Heat and Power Company, paying for each share so purchased one share of its own capital stock and \$40.00 in cash, and

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It is further ordered, That the Manchester Traction, Light and Power Company be, and is hereby, authorized to increase its capital stock by the issuance of 8,407 additional shares of its capital stock. Five thousand six hundred and seven of said shares shall be given in exchange, share for share, for a like number of shares of the capital stock of the Nashua Light, Heat and Power Company. Two thousand eight hundred of said shares shall be offered to the shareholders of said Manchester Traction, Light and Power Company proportionately at par, the proceeds thereof to be used only in the payment of the sum of \$40.00 for each share of the capital stock of the Nashua Light, Heat and Power Company purchased under authority of this order, in payment of the cost of extensions and additions required in order to connect the lines and system of the Manchester Traction, Light and Power Company with the lines and system of the Nashua Light, Heat and Power Company, and in payment of indebtedness heretofore incurred in making permanent improvements and additions to the plant and works of the Manchester Traction, Light and Power Company, and

It is further ordered, That on July 1 and January 1 in each year said corporation shall file with this Commission a detailed account, duly sworn to by its treasurer, showing the disposition of the proceeds of such stock till the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Service Commission this twenty-third day of June, 1914.

OHIO.

The Public Utilities Commission.

IN THE MATTER OF THE APPEAL OF THE BUCYRUS LIGHT AND POWER COMPANY FROM AN ORDINANCE PASSED BY THE CITY OF BUCYRUS, ESTABLISHING THE RATES TO BE CHARGED FOR ELECTRIC CURRENT FURNISHED FOR LIGHTING AND POWER PURPOSES IN SAID CITY OF BUCYRUS, OHIO.

P. S. C. No. 590.

Dated September 8, 1914.

Rehearing Denied.

ORDER.

This case came on this day for consideration upon the application of the Bucyrus Light and Power Company, filed herein on the twenty-first day of July, 1914, for a rehearing of this case in respect to the order* heretofore made by the Commission upon the valuation of the property of said company used and useful for the convenience of the public, as specified in said application and upon the grounds for rehearing specifically set forth by said company in said application, and to set aside said order with respect to the valuation of the property of said company used and useful for the convenience of the public, and the Commission being fully advised in the premises, finds that sufficient reason for such rehearing and to set aside said order has not been made to appear.

It is, therefore, ordered, That said application for rehearing and to set aside said order be, and the same is hereby, denied.

Dated at Columbus, Ohio, this eighth day of September, 1914.

* Printed in Commission Leaflet No. 32, at page 717.—Ed.

WISCONSIN.

Railroad Commission.

In re INVESTIGATION ON MOTION OF THE COMMISSION OF THE
SERVICE OF THE STEVENS POINT LIGHTING COMPANY.

In re APPLICATION OF THE STEVENS POINT LIGHTING COM-
PANY FOR AUTHORITY TO INCREASE RATES.

No. U—301.

Decided April 15, 1914.

Investigation of Gas and Electric Service—Increase in Rates.

Two separate actions are involved in this case: (1) the Commission, on its own motion, investigated the gas and electric service rendered by the Stevens Point Lighting Company; and (2) the company applied for authority to increase its rates for electric service.

Service Regulations.

With respect to the matter of service, it appears that the utility has at no time fully complied with the rules of the Commission concerning standards of service. The utility has failed specifically to comply with the rules prescribed in *In re Standards for Gas and Electric Service*, 1913, 12 W. R. C. R. 418, for the making of periodic tests of gas and electric meters and the keeping of records of such tests, the keeping of station records and the control of voltage variation in electric utilities. The utility has, however, largely removed the main causes of complaint, voltage variation and "line drop," by the rehabilitation of its distribution system.

Discriminatory Rates—Rates for Electric Light and Power—Valuation of Property—Investigation of Revenues and Expenses—Schedule of Reasonable Rates Prescribed.

With respect to the matter of electric rates, the utility alleges that its present power schedule is discriminatory because it permits long hour consumers to obtain current at an excessively low rate and asks for an increase in rates to power consumers, even though it be necessary to decrease lighting rates to offset the increased revenues derived from a higher power schedule. The utility secures its power from the Stevens Point Power Company, but inasmuch as the utility is the sole customer

of the power company and the two companies have identical personnels of owners and executives, it appears that the companies are but nominally separate entities. A valuation of the properties of the two companies was made and the revenues and expenses of the electric department of the utility were investigated. The expenses in question were apportioned between capacity and output and further apportioned among municipal street lighting, commercial lighting, and power, and the unit costs were ascertained. The rate now exacted by the utility for current supplied for commercial lighting is $13\frac{1}{2}$ cents per kilowatt hour, minimum bill 50 cents, although the utility has a schedule on file with the Commission providing for reductions to 12 cents per kilowatt hour for the second 100 kilowatt hours, 11 cents per kilowatt hour for the third 100 kilowatt hours, and 10 cents for all current used in excess of 300 kilowatt hours. No explanation of this unauthorized increase in rates is given. A schedule of rates believed to be reasonable is constructed and its probable effects on various sized installations in each classification of consumers determined. The estimates of revenues to be received under the schedule suggested, when summarized and compared with the present revenues, show a general reduction in revenues amounting to 13 per cent.

Failure to Allow for Depreciation Equivalent to Withdrawal of Capital from Business.

The failure of a utility to make allowance for depreciation if the earnings have been sufficient is tantamount to a withdrawal of capital from the business and the cost of reproduction new must be diminished in determining the fair value upon which the reasonable return allowed is to be based when an adequate reserve for depreciation has not been provided. The utility is, however, entitled to earn an amount sufficient to offset future depreciation. In the instant case 4 per cent. on the cost new is allowed as an operating expense to cover depreciation.

Charges by One of Two Interdependent Companies to the Other Not Conclusive in Determining Operating Expenses.

An excessively low book charge for power supplied by one of two interdependent companies to the other is not necessarily conclusive on the Commission, for the Commission can no more recognize such a charge as proper than it could an unreasonably high book charge. A revision of the power expense to meet the existing conditions is therefore made in the instant case.

Saving Effected by Possession of Economical Source of Supply Must be Shared with Public in Form of Lower Rates.

A public utility which possesses an especially economical source of supply is not entitled to retain the entire saving effected by it but a portion of the saving should be given to the public in the form of lower rates.

**Conformity with Commission's Standards for Gas and Electric Service
Ordered — Schedule of Rates Prescribed.**

Held: 1. Although the utility has improved conditions in its effort to comply with service regulations, its compliance with these regulations is still unsatisfactory with respect to the making of meter tests and the keeping of the records of these tests.

2. The rates exacted by the utility for commercial electric lighting and power service are unjustly discriminatory as between long hour and short hour users, and the charges made for street lighting are excessive.

The utility is ordered: (1) to conform within sixty days to the service rules which it has been violating and to all others set forth in *In re Standards for Gas and Electric Service*, 1913, 12 W. R. C. R. 418; and (2) to put into effect a schedule of electric rates prescribed by the Commission for commercial lighting, power and street lighting. The rate ordered for street lighting is to become effective only when the city of Stevens Point has filed notice with the Commission and the utility of its acceptance of a contract providing for the service of ninety or more lamps.*

* Syllabus prepared by the Commission.

INTERSTATE COMMERCE COMMISSION.

Conference Ruling No. 412.

Dated April 8, 1913.

Passes to an Attorney Engaged in the Work of a Carrier

A carrier arranged with a lawyer to give preferred attention to its railroad business at a monthly salary, the attorney being permitted also to engage in general practice. Upon inquiry: *Held*, That time passes may not lawfully be issued in such a case unless substantially all the attorney's time is devoted to the work of the carrier. (See Rulings 93-a and 208-a.)

Conference Ruling No. 418.

Dated May 12, 1913.

Interstate Carrier Defined.

An electric street railway, with a large passenger traffic and a substantial intrastate freight movement, derives a very small percentage of its revenue from shipments moving between interstate points. It asserts that its entire freight service, both state and interstate, is performed as a matter of accommodation to patrons along its line.

Upon inquiry: *Held*, That if a company engages in interstate commerce at all it thereby becomes subject to the act and is amenable to its provisions with respect to making statistical, annual, and other reports to the Commission and must file tariffs. (See Rulings 197 and 368.)

Conference Ruling No. 426.

Dated June 9, 1913.

Time Passes to Local Attorneys, Surgeons, Etc.

The Commission adheres to the ruling many times repeated that it is unlawful for an interstate carrier to issue time passes to local attorneys, surgeons, and others, who do not devote substantially all their time to the work or business of the carrier. The principle of *Conference Ruling 208-a* is reaffirmed.

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Conference Ruling No. 434.

Dated July 23, 1913.

Passes to Officials of Railroads in Adjacent Foreign Countries.

Free interstate transportation may lawfully be issued to officials of any railroad in an adjacent foreign country which has filed with this Commission joint tariffs and concurrences in connection with interstate carriers in the United States without reservation as to the Commission's jurisdiction.

Conference Ruling No. 435.

Dated July 24, 1913.

Destruction of Records.

It is the view of the Commission that all maps, profiles, plans, specifications, estimates of work, records of engineering studies, field books, and other records pertaining to the physical property of carriers come within the prohibition of destruction contained in Section 20 of the act, and as such shall not be destroyed or otherwise disposed of unless their destruction be specifically authorized in the orders of the Commission in the matter of the destruction of records. (See orders of the Commission governing the destruction of records.)

Conference Ruling No. 446.

Dated November 4, 1913.

Passes to Station Agent Who Devotes Only Part Time to Railroad Duties.

Upon inquiry: *Held*, That a station agent employed by a railroad company may not lawfully receive free transportation when he employs other persons to perform his duties so that he may devote the greater part of his time to other business. (See Ruling 208-a.)

Conference Ruling No. 452.

Dated January 6, 1914.

Free Transportation of Property for Townships and Counties.

Upon inquiry: *Held*, That townships and counties are municipalities within the meaning of Section 22 of the act to regulate commerce and carriers may lawfully transport their property free or at reduced rates. (See Rulings 33, 36, 297 and 311.)

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THE UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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THE UNITED STATES DEPARTMENT OF THE INTERIOR

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II. PURPOSE

1. The first of these is the fact that the majority of the population of the United States is now living in urban areas. This is a result of the process of urbanization, which has been going on since the beginning of the 20th century. The population of the United States has increased from about 100 million in 1900 to over 200 million in 1950. At the same time, the population of rural areas has decreased from about 100 million in 1900 to about 50 million in 1950. This has led to a concentration of the population in urban areas, which has had a number of important consequences. One of the most important is that it has led to a change in the way of life of the majority of the population. In rural areas, the population has traditionally been engaged in agriculture, and the way of life has been based on the rhythms of the seasons. In urban areas, the population has traditionally been engaged in industry and commerce, and the way of life has been based on the rhythms of the clock. This has led to a number of differences between the two ways of life, including differences in the amount of leisure time, the amount of social contact, and the amount of exposure to the elements. These differences have led to a number of problems, including the problem of overcrowding, the problem of pollution, and the problem of social isolation. These problems have led to a number of efforts to improve the quality of life in urban areas, including the development of parks and recreation areas, the development of public housing, and the development of social services. These efforts have had some success, but there is still a long way to go. The second of the two main reasons for the importance of the urban population is the fact that the majority of the population of the United States is now living in the South and West. This is a result of the process of migration, which has been going on since the beginning of the 20th century. The population of the United States has increased from about 100 million in 1900 to over 200 million in 1950. At the same time, the population of the North and Midwest has decreased from about 100 million in 1900 to about 50 million in 1950. This has led to a concentration of the population in the South and West, which has had a number of important consequences. One of the most important is that it has led to a change in the way of life of the majority of the population. In the North and Midwest, the population has traditionally been engaged in industry and commerce, and the way of life has been based on the rhythms of the clock. In the South and West, the population has traditionally been engaged in agriculture, and the way of life has been based on the rhythms of the seasons. This has led to a number of differences between the two ways of life, including differences in the amount of leisure time, the amount of social contact, and the amount of exposure to the elements. These differences have led to a number of problems, including the problem of overcrowding, the problem of pollution, and the problem of social isolation. These problems have led to a number of efforts to improve the quality of life in the South and West, including the development of parks and recreation areas, the development of public housing, and the development of social services. These efforts have had some success, but there is still a long way to go. The third of the two main reasons for the importance of the urban population is the fact that the majority of the population of the United States is now living in the South and West. This is a result of the process of migration, which has been going on since the beginning of the 20th century. The population of the United States has increased from about 100 million in 1900 to over 200 million in 1950. At the same time, the population of the North and Midwest has decreased from about 100 million in 1900 to about 50 million in 1950. This has led to a concentration of the population in the South and West, which has had a number of important consequences. One of the most important is that it has led to a change in the way of life of the majority of the population. In the North and Midwest, the population has traditionally been engaged in industry and commerce, and the way of life has been based on the rhythms of the clock. In the South and West, the population has traditionally been engaged in agriculture, and the way of life has been based on the rhythms of the seasons. This has led to a number of differences between the two ways of life, including differences in the amount of leisure time, the amount of social contact, and the amount of exposure to the elements. These differences have led to a number of problems, including the problem of overcrowding, the problem of pollution, and the problem of social isolation. These problems have led to a number of efforts to improve the quality of life in the South and West, including the development of parks and recreation areas, the development of public housing, and the development of social services. These efforts have had some success, but there is still a long way to go.

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— *Journal of the American Medical Association*, 1967, 201: 1001-1002.

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